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SUPREME COURT, U.S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1954

No. ~~457~~

CORN PRODUCTS REFINING COMPANY,
PETITIONER,

v.

COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 22, 1954

CERTIORARI GRANTED JANUARY 10, 1955

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 457

CORN PRODUCTS REFINING COMPANY,
PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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TRANSCRIPT OF RECORD IN TAX COURT

DOCKET NO. 20399 (1940).

The Tax Court of the United States

1

Docket No. 20399.

CORN PRODUCTS REFINING COMPANY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

2

Docket Entries.

APPEARANCES

For Petitioner: JAY O. KRAMER, Esq.
SAMUEL A. MCCAIN, Esq.

For Respondent: WALT MANDRY, Esq.

1948

Sep 20—Petition received and filed. Taxpayer notified. Fee paid. 3

Sep 21—Copy of petition served on General Counsel.

Sep 20—Request for hearing at New York City filed by taxpayer. Granted 9/29/48.

Oct 28—Answer filed by respondent.

Nov 1—Copy of answer served on taxpayer, New York City.

4 1950.

Mar 30—Entry of appearance of Jay O. Kramer as counsel filed.

Apr 6—Motion to set proceeding for hearing on the June 5, 1950 New York Calendar filed by petitioner.

Apr 11—Petitioner's motion filed April 6, 1950 is granted.

Apr 17—Hearing set June 5, 1950, New York.

Jun 13—Hearing had before Judge Murdock on merits.
5 Appearance of Samuel A. McCain as counsel filed. Stipulation of Facts with exhibits 1-A to 5-E filed at hearing. Briefs due Aug. 14, 1950; replies due September 13, 1950.

Jul 3—Transcript of Hearing 6/13/50 filed.

Aug. 10—Motion for extension to September 15, 1950 to file briefs and until Oct. 1, 1950 to file reply briefs filed by General Counsel. Granted 8/11/50.

Aug 14—Brief filed by taxpayer. Copy served 9/1/50.

Aug 31—Brief filed by General Counsel.

6 Sep 6—Motion for extension to Oct. 16, 1950 to file reply brief, filed by taxpayer. Granted 9/7/50.

Oct 10—Reply brief filed by taxpayer. Copy served.

Oct 18—Motion for leave to file the attached reply brief, brief lodged, filed by General Counsel. 10/18/50, granted.

1951

Feb 20—Findings of Fact and Opinion rendered, J. Murdock. Decision will be entered under Rule 50. Copy served.

Docket Entries.

Mar 19—Motion for reconsideration filed by petitioner. Denied 3/21/51. 7

Mar 19—Motion for review by entire Court filed by petitioner. Denied 3/21/51.

1953

Jun 8—Respondent's Computation filed with agreement thereon.

Jun 15—Decision entered, Judge Murdock, Div. 3.

Jun 25—Petition for review by U. S. Court of Appeals, Second Circuit, with Assignment of Errors filed by petitioner. 8

Jun 25—Proof of service filed.

Jul 8—Designation of contents of record with proof of service thereon filed by petitioner.

9

Petition.

10

[SAME TITLE.]

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (SN-IT-7) dated June 24, 1948, and as a basis of its proceeding alleges as follows:

1. The petitioner is a corporation duly organized under the laws of the State of New Jersey, with its prin-
11 cipal office at 17 Battery Place, New York 4, New York. The return for the period here involved (1940) was filed with the Collector of Internal Revenue for the Second District of New York.

2. The notice of deficiency (a copy of which is attached and marked Exhibit "A") was mailed to the petitioner on June 24, 1948.

3. The taxes in controversy are income taxes for the calendar year 1940 representing a deficiency in the sum of $163,804.78 claimed by the Commissioner of Internal
12 Revenue as against a refund claimed by the petitioner.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) The Commissioner of Internal Revenue erred in failing to treat profits and losses realized by petitioner in 1940 from the purchase and sale of corn futures contracts as capital gains and losses, under Section 117 of the Internal Revenue Code, as limited by Section 118 of the Internal Revenue Code. This error resulted in an understatement of "Cost of Goods Sold" in the sum of $680,587.39; an understatement of recognized net short-

term capital gain in the sum of $62,328.10; and an understatement of recognized net long-term capital loss in the sum of $202,662.60. 13

(b) The Commissioner of Internal Revenue erred in understating the "Foreign Tax Credit".

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a)(1) In the return of the petitioner the sum of $680,587.39 representing net profit in 1940, from the purchase and sale of corn futures contracts, was treated as a reduction of the "Cost of Goods Sold." 14

(2) All such corn futures contracts were purchased through members of a recognized Commodity Exchange, in varying quantities. Such contracts were subject to the rules, regulations and customs of the Commodity Exchange where the trades were made, and when required were also made under authority of the Act of Congress known as the "Commodity Exchange Act."

(3) The purchase and sale of such corn futures contracts was confirmed by members of recognized Commodity Exchanges.

(4) The purchase and sale of corn futures contracts by the petitioner constitutes the purchase and sale of capital assets under the provisions of Section 117 (a) of the Internal Revenue Code. Such corn futures contracts were (i) not stock in trade or other property properly includible in inventory of the petitioner; (ii) the petitioner did not hold such corn futures contracts primarily for sale to customers in the ordinary course of petitioner's trade or business; and (iii) such corn futures contracts are not property, used in the petitioner's trade or business, of a character which is subject to the allowance for depreciation. 15

16 (5) The petitioner did not engage in hedging transactions in respect of the corn futures contracts which it purchased as defined in G. C. M. 17322 and the decisions of the Courts. Petitioner never sold corn futures contracts against its inventory position and never purchased corn futures contracts to protect long-term sales contracts of its products. Petitioner's purpose in acquiring corn futures contracts was to enable it, on the maturity dates of such contracts, to take in the corn called for therein, if there should be insufficient cash corn available in the market on such maturity dates to meet petitioner's requirements. The petitioner sold such contracts when it be-
17 came apparent that there would be sufficient cash corn available on their maturity dates to meet its requirements. Infrequently, when petitioner endeavored to sell such a contract, it could not find a buyer and therefore, had to take in the corn at the maturity date of the contract.

(6) The cost of the corn futures contracts purchased by the petitioner, which contracts were sold during 1940 and which were held for a period of not more than 18 months (such cost and holding period having been computed without the application of the provisions of Section 118 of the Internal Revenue Code) was $680,587.39 less than their
18 selling price.

(7) The basis of the corn futures contracts purchased by the petitioner, which contracts were sold during 1940 and which were held for a period of not more than 18 months (such basis and holding period having been computed in accordance with the provisions of Section 118 of the Internal Revenue Code) was $62,328.10 less than their selling price.

(8) The basis of the corn futures contracts purchased by the petitioner, which contracts were sold during 1940 and which were held for a period of more than 18 months (such basis and holding period having been computed in

accordance with the provisions of Section 118 of the Internal Revenue Code) was $202,662.60 more than their selling price. 19

(9) The sum of $680,587.39 set forth in paragraph 5 (a)(1), supra, was treated by the petitioner, in its return for 1940, in reduction of the "Cost of Goods Sold" as shown therein.

(10) The decisions of the Courts in the matters of (1) *Trenton Cotton Oil Company*, 147 F. (2d) 33 (rehearing denied, 148 F. (2d) 208), (2) *Estate of Dorothy Makransky*, 5 T. C. 397 (affirmed by CCA-3, 154 F. (2d) 59), and (3) *Stewart Silk Corporation*, 9 T. C. 174 (A. 1948-3-12739) were all promulgated after the filing of the petitioner's 1940 return. 20

(11) A corn futures contract is a security (*Trenton Cotton Oil Company*, 147 F. (2d) 33 (rehearing denied, 148 F. (2d) (208)).

(12) Section 118 of the Internal Revenue Code applicable to wash sales of securities is applicable to losses realized from the sale of corn futures contracts.

(b)(1) The Internal Revenue Agent's Report dated October 25, 1945 covering the examination of the 1940 return of Corn Products Refining Company and Refinacoes De Milho (consolidated return, form 1120) allowed a "Foreign Tax Credit" in the sum of $247,259.42, as shown in Exhibit "A" thereof. 21

(2) The Commissioner of Internal Revenue in his final determination (Exhibit "A", attached) did not increase the "Foreign Tax Credit" of $247,259.42 as set forth in paragraph 5 (b)(1), supra, to reflect the adjustments made to the above-mentioned Internal Revenue Agent's Report dated October 25, 1945.

22 (3) Based on the final determination of the Commissioner of Internal Revenue (Exhibit "A", attached) the "Foreign Tax Credit" should have been allowed in the sum of $339,007.88, as set forth in Exhibit "B" attached hereto and made part thereof.

Wherefore, the petitioner prays that this Court may hear the proceeding and grant the relief herein requested, together with any and all further relief that the Court may deem just and proper.

CORN PRODUCTS REFINING COMPANY

23 By: H. CALLENDER

H. Callender, Treasurer.

17 Battery Place,

New York 4, N. Y.

24

EXHIBIT A, ANNEXED TO PETITION.

Form 1279 (Rev. Mar. 1946)

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
New York 7, New York

Office of
Internal Revenue Agent
in Charge
2nd New York Division
90 Church Street—Room 1120

Jun 24 1948

Corn Products Refining Company
17 Battery Place
New York 4, New York

Sirs:

You are advised that the determination of your income tax liability and that of your affiliated company for the taxable year ended December 31, 1940 discloses a deficiency of $163,804.78, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Room 1120, 90 Church Street, New York 7, New York, for the attention of JPB-90D.

Exhibit A; Annexed to Petition.

The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

GEO. J. SCHOENEMAN,
Commissioner.
By (Signed) C. R. KRIGBAUM
Internal Revenue Agent in Charge.

Enclosures:
Statement
Form of waiver
JPB/fmd

STATEMENT

Corn Products Refining Company
17 Battery Place
New York 4, N. Y.

	Returns Examined	
	Form	Year
Parent Company		
Corn Products Refining Company 17 Battery Place New York 4, New York	1120	1940
Subsidiary Company		
Refinacoes de Milho, Brazil 17 Battery Place New York 4, New York	1122	1940

Tax Liability of Corn Products Refining Company and Refinacoes de Mi[illegible], Brazil, as provided for in

section 23.15 of Regulations 104 prescribed under section 141(b) of the Internal Revenue Code, for the taxable year ended December 31, 1940 31

	Liability	Assessed	Deficiency
Income Tax	$1,944,429.51	$1,780,624.73	$163,804.78

In accordance with section 23.16 of Regulations 104, the deficiency will be assessed severally against each corporation named above.

In making this determination of your income tax liability and that of your affiliated company, careful consideration has been given to reports of examination dated 32
February 25, 1943, August 28, 1944, February 28, 1945, and October 25, 1945; to your protests dated November 16, 1944, January 24, 1946, November 15, 1946, and supplemental data; to the statements made at the conferences held on December 18, 1946, January 13, 1947, January 15, 1947, April 16, 1947, May 13, 1947, May 16, 1947, August 21, 1947 and December 22, 1947; and to your claim for refund filed on May 9, 1945.

With respect to your claim for refund in which it is contended that there was an overpayment of income tax in the amount of $42,098.57 for the year 1940, you are advised that your contention cannot be conceded in view 33
of the findings set forth herein.

If a petition to The Tax Court of the United States is filed against the deficiency proposed herein, the issues set forth in your claim for refund should be made a part of the petition to be considered by The Tax Court in any redetermination of your tax liability. If a petition is not filed, the claim for refund will be disallowed and official notice will be issued by registered mail in accordance with section 3772 of the Internal Revenue Code.

The Italian and Brazilian dividends received by you have been accorded the same treatment as that for which you contended in each of the prior years, to wit, they

have been included in the taxable income for the year in which paid to you.

A copy of this letter and statement has been mailed to your representative, Mr. Milton M. Bernard, 10 East 40th Street, New York 16, New York, in accordance with the authority contained in the power of attorney executed by you.

ADJUSTMENTS TO CONSOLIDATED NET INCOME

Consolidated net income as disclosed by return		$8,745,356.62
Unallowable deductions and additional income:		
(a) Pension and profit-sharing payments	$185,280.39	
(b) Long-term capital loss disallowed (stock in German subsidiaries)	796,830.17	
(c) Excessive depreciation-machinery	407,894.02	
(d) Capital gains — foreign exchange:		
1—Long-term	210,667.36	
2—Short-term	28,260.71	
(e) Patent and development costs	81,081.94	
(f) Interest from Denmark	10,173.92	
(g) Loss on shipment to India	13,226.08	
(h) Foreign royalties	35,485.40	1,768,899.99
Total		$10,514,256.61

Exhibit A, Annexed to Petition.

Nontaxable income and additional deductions:			37
(i) Foreign dividends		$161,726.96	
(j) Capital stock tax		104,555.00	
(k) Patent depreciation		11,415.79	
(l) Short-term capital loss on bonds		5,718.27	
(m) Interest on defaulted bonds		7,718.13	
(n) Experimental expenses		43,041.65	
(o) Interest on Commodity Credit Corp. bonds		562.50	
(p) Interest due subsidiary		2,533.90	337,272.20 38
Consolidated net income as revised			$10,176,984.41

EXPLANATION OF ADJUSTMENTS

(a) It is determined that the amounts paid to, or on behalf of, employees of your subsidiary companies do not constitute expenses deductible by you under Section 23(a)(1)(A) of the Internal Revenue Code, since that section limits deductions to those paid or incurred by *the taxpayer* in carrying on a trade or business.

(b) Long-term capital loss in the amount of $796,830.17 from sale of stock in two German subsidiaries is held to be unallowable as a deduction in the year 1940. 39

(c) Deduction claimed for depreciation of machinery is held to be excessive in the amount of $407,894.02, as follows:

	Corn Products Refining Company	Refinacoes de Milho, Brazil	Totals
Claimed	$925,655.56	$48,498.78	$974,154.34
Allowed	542,469.37	23,790.95	566,260.32
Excess, disallowed	$383,186.19	$24,707.83	$407,894.02

Exhibit A, Annexed to Petition.

40 (d) 1. and 2—Long-term capital gain and short-term capital gain are increased by $210,667.36 and $28,260.71, respectively, to give effect to the correct amounts realized on the sales of foreign exchange.

(e) Patent and development costs in the amount of $81,081.94 are held to represent capital expenditures and are therefore unallowable as current deductions.

(f) Accrued interest from Denmark in the amount of $10,173.92, omitted from return, is held to be includible in taxable income for the year 1940.

41 (g) Loss of $13,226.58 claimed on shipment of corn to India is not applicable to the year 1940 and is, therefore, disallowed as a deduction for such year.

(h) and (i) Foreign royalties are increased by $35,485.40 and foreign dividends decreased by $161,726.96, to reflect the correct amounts reportable in respect of the following countries:

	Royalties		Dividends	
	Increase	(Decrease)	Increase	(Decrease)
Brazil	$15,205.77			$(101,448.93)
South Africa	3,224.78			
42 France	10,037.03			
Denmark	12,589.39			
Germany		(5,571.57)		(60,371.54)
Yugo Slavia			93.51	
Net Increase (Decrease)	$35,485.40			$(161,726.96)

(j) Deduction for Federal capital stock tax is increased by $104,555.00 to give effect to the correct amount accrued and allowable in the taxable year.

Exhibit A, Annexed to Petition.

(k) Deduction for patent depreciation is allowed in the amount of $11,415.79, the details of which have been furnished you. 43

(l) Short-term capital loss of $5,718.27 sustained on the sale of various bonds, not previously available as a deduction, is now allowed as an offset against short-term capital gains.

(m) The amount of $7,718.13 reported as interest on defaulted bonds of New York, New Haven & Hartford Railroad Company is held to represent a return of capital.

(n) A deduction is allowed in the amount of $43,041.65 for the year 1940, representing experimental expenses in connection with the improvement of production. 44

(o) The amount of $562.50 reported as interest on obligations of Commodity Credit Corporation is held to be excludible from taxable income.

(p) Deduction in the amount of $2,533.90 is allowed for the year 1940 in connection with interest due to your subsidiary, N. V. Corn Products Co., Holland.

Foreign tax credit is determined in the amount of $247,259.42, the details of which have been furnished you heretofore. 45

Exhibit A, Annexed to Petition.

46

COMPUTATION OF TAX

Internal Revenue Code as Amended

Income and Income Defense Taxes

Consolidated net income as revised		$10,176,984.41
Less: Interest on obligations of the United States		2,629.69
Consolidated adjusted net income		$10,174,354.72
Less: Dividends received credit		1,042,317.54
47 Consolidated normal-tax net income		$ 9,132,037.18
Income tax, 22.1% of $9,132,037.18		$ 2,018,180.22
Income Defense Tax, 1.9% of $9,132,037.18		173,508.71
Total income and income defense taxes		$ 2,191,688.93
Less: Foreign tax credit		247,259.42
Correct income and income defense tax liability		$ 1,944,429.51
48 Income and income defense taxes assessed:		
Original, Account No. 430000, September 1941 List	$1,595,879.60	
Additional, Account No. 529009, June 1943 List	184,745.13	1,780,624.73
Deficiency of income and income defense taxes		$ 163,804.78

Exhibit A, Annexed to Petition.

JPB-90D. 2nd New York Division 49

Form 870
Treasury Department
Internal Revenue Serv.
(Revised June 1941)

CORN PRODUCTS REFINING COMPANY

WAIVER OF RESTRICTIONS ON ASSESSMENT AND COLLECTION OF DEFICIENCY IN TAX

Pursuant to the provisions of section 272 (d) of the 50
Internal Revenue Code, and/or the corresponding provisions of prior internal revenue laws, the restrictions provided in section 272 (a) of the Internal Revenue Code, and/or the corresponding provisions of prior internal revenue laws are hereby waived and consent is given to the assessment and collection of the following deficiency or deficiencies in tax:

taxable year ended December 31, 1940 income tax in the sum of $163,804.78

taxable year ended ..... income tax in the sum of $..... 51

taxable year ended ..... income tax in the sum of $.....

taxable year ended ..... (declared value) excess-profits tax in the sum of $.....

taxable year ended ..... excess profits tax in the sum of $.....

taxable year ended ..... in the sum of $.....

Exhibit A, Annexed to Petition.

52 amounting to the total sum of $163,804.78
together with interest thereon as provided by law.

.....
(Taxpayer)

.....
(Taxpayer)

.....
(Address)

53 By.....

Date.....

Note: The execution and filing of this waiver at the address shown in the accompanying letter will expedite the adjustment of your tax liability as indicated above. It is not, however, a final closing agreement under section 3760 of the Internal Revenue Code, and does not, therefore, preclude the assertion of a further deficiency in the manner provided by law should it subsequently be determined that additional tax is due, nor does it extend
54 the statutory period of limitation for refund, assessment, or collection of the tax.

If this waiver is executed with respect to a year for which a JOINT RETURN OF A HUSBAND AND WIFE was filed, it must be signed by both spouses, except that one spouse may sign as the agent for the other.

Where the taxpayer is a corporation, the waiver shall be signed with the corporate name, followed by the signature and title of such officer or officers of the corporation as are empowered to sign for the corporation, in addition to which the seal of the corporation must be affixed.

EXHIBIT B, ANNEXED TO PETITION.

CORN PRODUCTS REFINING COMPANY AND REFINANCOES DE MILHO (CONSOLIDATED)

COMPUTATION OF CREDIT FOR FOREIGN TAXES—YEAR 1940 (BASED ON COMMISSIONER'S DETERMINATION AS SET FORTH IN 90-DAY LETTER DATED 6/24/48)

	Net Foreign Gross Income	Direct Foreign General Expense	Ratable H. O. Expense	Total Foreign Expense	Net Foreign Income	Ratio	Limitation 131-b-1	Foreign Taxes 131-a	Foreign Taxes 131-f	Total Foreign Taxes	Credit Allowable
						$9,132,037.18	$2,191,688.93				
Argentina	$ 183,681.54	$ 2,780.56	$ 13,216.63	$ 15,997.19	$ 167,684.35	.01836221	$ 40,244.25	$ 9,091.53		$ 9,091.53	$ 9,091.53
Australia		107.12		107.12	*107.12*						
Australia											
Belgium	*444.76*	134.74		134.74	*579.50*						
Brazil	227,607.65	3,407.55	15,937.81	19,345.36	208,262.29	.02280568	49,982.96	1,216.46		1,216.46	1,216.46
Canada	233,685.15	253.44	16,363.37	16,616.81	217,068.34	.02376998	52,096.40	10,076.26	54,918.42	64,994.68	52,096.40
Canary Islands											
China	*6,807.76*	4,986.06		4,986.06	*11,793.82*						
Columbia	8,812.95	1,116.45	618.04	1,734.49	7,078.46	.00077512	1,698.82	306.63		306.63	306.63
Cuba	*564.71*	19.60	133.04	152.64	*717.38*						
Czechoslovakia	104.32	8.67	7.30	15.97	88.35						
Denmark	22,007.89	4.17	1,593.96	1,598.13	20,409.76						
Dominican Republic											
Dutch East Indies											
Egypt	6,594.00	201.10	462.05	663.15	5,930.85	.00064946	1,423.41	410.68	1,299.20	1,709.88	1,423.41
England	576,125.52	39,651.12	41,182.29	80,833.41	495,292.11	.05423676	118,870.11	704.92	141,187.25	141,892.17	118,870.11
France	*23,352.68*	44,185.08	834.12	45,019.20	*68,371.88*						
Germany	573,852.37	14,721.54	40,182.96	54,904.50	518,947.87	.05682717	124,547.48	36,477.41	8,528.84	45,006.25	45,006.25
Greece											
Holland	365,359.43	673.65	25,760.37	26,434.02	338,925.41	.03711389	81,342.10		75,670.31	75,670.31	75,670.31
Hungary											
India	*28,226.51*	931.19	2,046.71	2,977.90	*31,204.41*						
Italy	140,752.24	13,135.38	9,856.45	22,991.83	117,760.41						
Japan	174,966.00	31,287.30	12,251.67	43,538.97	131,427.03	.01439186	31,542.48	18,030.59	50,774.34	68,804.93	31,542.48
Mexico	30,565.30	5,142.90	2,140.28	7,284.18	23,281.12	.00254939	5,587.47	3,305.17		3,305.17	3,305.17
Netherlands E. Indies	*1,319.23*				*1,319.23*						
New Zealand	*1,998.50*	11.46		11.46	*2,009.96*						
Nicaragua											
Others	2.38	17,758.56	.17	17,758.73	*17,756.35*						
Phillipines		6,667.88		6,667.88	*6,667.88*						
Poland											
Puerto Rico		404.32		404.32	*404.32*						
Portugal	*5.96*				*5.96*						
Santo Domingo		376.76		376.76	*376.76*						
South Africa	*799.13*	.50	225.80	226.30	*1,025.43*						
Switzerland	2,412.85	225.75	190.76	416.51	1,996.34	.00021861	479.13	863.45	1,373.23	1,536.68	479.13
Turkey											
Yugoslavia	*6,028.47*	997.05	406.00	1,403.05	*7,431.52*						
Total	$2,476,981.85	189,190.90	183,409.78	372,600.68	2,104,381.17						339,007.88

[Figures in italics were red in original.]

Answer.

58

[SAME TITLE.]

The respondent, by his attorney, Charles Oliphant, Chief Counsel for the Bureau of Internal Revenue, for answer to the petition heretofore filed in this proceeding, admits, denies, and avers as follows:

1. Admits the allegations of paragraph 1 of the petition.

59

2. Admits the allegations of paragraph 2 of the petition.

3. Admits that the taxes in controversy are income taxes for the calendar year 1940, in which a deficiency is asserted by respondent, but respondent denies all other allegations of paragraph 3 of the petition.

4. (a) and (b) Denies each severally the allegations of sub-paragraphs (a) and (b) of paragraph 4 of the petition.

60

5. (a) (1) Admits the allegations of sub-subparagraph (1) of subparagraph (a) of paragraph 5 of the petition.

(2) to (5), inclusive. Denies each severally the allegations of sub-subparagraphs (2) to (5), inclusive, of subparagraph (a) of paragraph 5 of the petition.

(6) Admits the allegations of sub-subparagraph (6) of subparagraph (a) of paragraph 5 of the petition.

(7) and (8) Denies each severally the allegations of sub-subparagraphs (7) and (8) of subparagraph (a) of paragraph 5 of the petition.

(9) Admits the allegations of sub-subparagraph (9) of subparagraph (a) of paragraph 5 of the petition. 61

(10) and (11) Respondent shows unto the Court that sub-subparagraphs (10) and (11) of subparagraph (a) of paragraph 5 of the petition contain no allegations of fact and are irrelevant, immaterial and impertinent to the petition herein; in so far as said sub-subparagraphs, or either of them, are considered of any materiality in said petition they are denied.

(12) Denies the allegations of sub-subparagraph (12) of subparagraph (a) of paragraph 5 of the petition.

62

(b) (1), (2) and (3) Denies each severally the allegations of sub-subparagraphs (1), (2) and (3) of subparagraph (b) of paragraph 5 of the petition.

6. Denies generally and specifically each and every allegation contained in the petition not hereinbefore admitted, qualified, or denied.

WHEREFORE, it is prayed that the appeal be denied.

Signed CHARLES OLIPHANT
HDT 63
CHARLES OLIPHANT,
Chief Counsel,
Bureau of Internal Revenue.

Of Counsel:

R. P. HERTZOG,
Division Counsel.

HENRY C. CLARK,
Special Attorney,
Bureau of Internal Revenue.

HCC:rgg 10/25/48

Findings of Fact and Opinion.

64

16 T. C. No. 49

[SAME TITLE.]

Docket No. 20399. Promulgated February 20, 1951.

WASH SALES—SECURITIES—SUBSTANTIALLY IDENTICAL—COMMODITY FUTURES—SECTION 118.—Contracts for the delivery of corn for a stated price at a stated future time are not securities within the
65 meaning of section 118 and one such contract is not substantially identical with another where the date for delivery is different and the contract price and the other contracting party may be different.

Jay O. Kramer, Esq., for the petitioner.

Walt Mandry, Esq., for the respondent.

The Commissioner determined a deficiency of $163,804.78 in the income tax of the petitioner and an affiliate for 1940. The issues in dispute are whether profits and losses of the petitioner resulting from purchases and sales of
66 corn futures are capital gains and losses within the meaning of section 117 and, second, whether the wash sales provisions of section 118 apply to those transactions.

FINDINGS OF FACT

The petitioner filed a consolidated corporate income tax return for 1940 with the collector of internal revenue for the second district of New York.

The petitioner is a nationally known corporation engaged in the manufacture and sale of corn products, including starches, sugars, syrups, oils, and feeds.

The maximum amount of raw corn which the petitioner

could store in its own plants during 1940 was 2,303,000 bushels. That quantity would keep it supplied for less than three weeks. The daily grind capacity of the plants of the petitioner during 1940 was 147,700 bushels. Similar conditions existed in prior years. 67

The principal product obtained by the petitioner from raw corn is starch. Cerelose is a refined sugar derived from starch. It competes with cane and beet sugars, but at a lower price, and constituted 15.93 per cent of the total sales of the petitioner in 1940.

A corn future consists of a contract to buy 5,000 bushels of corn, or some multiple thereof, of a stated quality, at a stated price, during a stated month in the future. The contracts involved were for delivery at a stated time within eleven months or less of the date of the contract. The party contracting to furnish the corn has the option of delivering the corn on any day during the month in which the contract matures and has the option of furnishing a different grade of corn at an appropriate adjustment in price. The transactions are made through a broker on a commodity exchange. The buyer furnishes his broker with a percentage, or margin, of the contract price of the corn until delivery is taken or the contract is sold, at which time final settlement is made. The contracts are freely dealt in on the commodity exchange. 68 69

The petitioner began to buy and sell corn futures in 1932 and continued that practice through 1940. It engaged in those futures transactions as a part of its corn buying program and as the most economical method of obtaining an adequate supply of raw corn in view of its limited storage facilities and the expense of increasing those facilities sufficiently to take care of its needs. Purchases of futures were made when the price of corn was advantageously low.

High corn costs following droughts in 1934 and 1936 resulted in losses on cerelose sales made by the petitioner

70 in 1937. The petitioner, in order to avoid or minimize similar losses, increased its buying of corn futures so that it would have corn available at prices which permitted it to sell cerelose in competition with beet and cane sugar. It never reached its goal of a long position of 12,000,000 bushels.

The petitioner took delivery of corn on some of its future contracts, but usually sold most of its corn futures in early summer if it then appeared that there would be no shortage of corn and no great danger of increased prices, but if the crop was poor, or there was danger of an increase in price, it sold its futures gradually as it
71 bought corn for grinding. The petitioner would begin to acquire additional futures contracts at harvest time each year.

The outbreak of World II in 1939 raised the price of cane and beet sugars to such an extent that the petitioner no longer needed the futures to assist it in selling cerelose successfully in competition with those sugars. It owned futures at the beginning of 1940 for the purchase of over 8,000,000 bushels of corn. That long position was reduced, beginning in about June, so that, at the end of the year, it had futures covering only about 1,400,000 bushels.

72 It was the petitioner's practice to account for its profits or losses on corn futures in an account entitled "Corn Miscellaneous". The balance in that account, at the end of each year prior to 1940, was debited or credited to cost of sales and in 1940, the profit balance of $680,587.39 was used to reduce "Cost of Goods Sold".

The Commissioner, in determining the deficiency for 1940, made no change in "Cost of Goods Sold" as reported by the petitioner on its return.

The transactions in futures resulted in losses of $816,164.03 for 1938 and of $424,437.54 for 1939, and a net profit of $680,587.39 for 1940.

The following table shows for three years the futures

purchased, those sold, and those under which delivery was taken, together with the amount of corn purchased and received at the plants: 73

Year	Futures purchased Contracts	Futures purchased Bushels	Futures sold Contracts	Futures sold Bushels	Futures under which delivery was taken Contracts	Futures under which delivery was taken Bushels	Bushels of Corn Purchased and Received at the plants Bushels
1938	824	19,675,000	755	17,400,000	192	4,975,000	35,650,773
1939	593	14,470,000	535	14,180,000	114	2,865,000	36,806,869
1940	437	8,125,000	728	14,595,000	24	250,000	37,222,409

The general sales policy of the petitioner, at all times material hereto, was to enter into contracts providing for shipment of the goods within thirty days and stating a definite price, but providing that the price should be that stated in the contract or the price in effect at date of delivery, whichever was lower. There were exceptions and variations to this general policy. One was that the petitioner, on January 15, 1940, invited all buyers to submit on or prior to January 20, orders for cerelose to be delivered as late as June 30, 1940. The buyer was guaranteed the lower of the January 15 price or the price in effect at date of delivery. The buyers were allowed to cancel all or parts of the amounts of the goods ordered. The petitioner received a great many orders in response to that invitation. Another exception was that the canning trade on the Pacific Coast was allowed to call on the petitioner for cerelose for delivery in more than thirty days. Cancellations were allowed in this situation also and the buyers were allowed the lower of the contract price or the price in effect at the date of delivery. The petitioner also agreed to furnish starch to two companies on what was, in effect, a cost plus basis. 74 75

The stipulation of facts is incorporated herein by this reference.

76

OPINION

MURDOCK, *Judge*: The parties have argued two points. One is whether contracts for the future delivery of corn are to be treated as capital assets in the hands of the petitioner so that gains or losses thereon are capital gains or loses, and the other is whether the wash sales provisions of section 118 apply to those transactions. The petitioner has not accounted for or reported its gains and losses from future transactions as capital gains and losses but, on the contrary, treated the 1940 gains as a reduction
77 in the cost of raw materials and the losses in prior years as an addition to the cost of goods sold. It thus reduced its income for prior years by the full amount of large losses sustained in those years on futures transactions and, being consistent, in 1940 reduced the cost of goods sold by the full amount of the 1940 gain. The Commissioner, in determining the deficiency, made no change in the taxpayer's treatment of the futures transactions and now insists that no change is necessary or proper. Nevertheless, the petitioner now seeks to have the transactions regarded as resulting in capital gains and losses within section 117.

78 Success on that point would have no effect on the tax liability in this case unless the second contention of the petitioner is also sustained. The petitioner sustained a short-term capital loss of $5,718.27 on bonds and it did not show any short-term capital gains on its return against which to offset that loss. However, the Commissioner, in determining the deficiency, held that there were short-term capital gains of $28,260.71 on foreign exchange and allowed the short-term capital losses to be deducted in full. His action in this respect is not challenged in this proceeding. The tax is the same whether the $680,587.39 reduces cost of goods sold or is taxed as a short-term capital gain. Thus, it is not necessary to decide in this

case whether or not section 117 applies to the futures 79
transactions unless it is held that section 118 also applies. The question of whether transactions in commodity futures are within section 117 is a difficult one as is shown by prior decisions cited by the parties. While there would seem to be logic and common sense in the position which the Commissioner now takes and which the petitioner has always taken in accounting for these transactions, nevertheless, the Court expresses no opinion on that subject at the present time.

Section 118 of the Internal Revenue Code was enacted to prevent a deduction for losses sustained in wash sales 80
of securities; that is, where the taxpayer at or about the time of a sale acquires identical or substantially identical securities. The deduction is postponed until the securities are disposed of and not replaced within 30 days. It provides that no deduction for loss shall be allowed under section 23(f), with exceptions not here material, if the loss is claimed to have been sustained from any sale "of shares of stock or securities" where within 30 days before or after the sale the taxpayer has acquired "substantially identical stock or securities". Other provisions are to the effect that the basis and the holding period of the securities sold attach to the securities purchased where the wash 81
sale provision has applied. The petitioner, by tracing its loss transactions of prior years and assuming that a number of those transactions were wash sales within the meaning of section 118, arrives at bases for the futures sold in 1940 which would show capital gains of $62,328.10 and capital losses of $202,662.60 instead of the gain of $680,587.39 which it reported in accordance with its consistent method of accounting. It relies on *Trenton Cotton Oil Company* v. *Commissioner*, 147 Fed. (2d) 33, rehearing denied 148 Fed. (2d) 208, reversing on this point a memorandum opinion of this Court.

We are unable to agree with the opinion in the cited

82 case holding that the words "stocks and securities", as used in section 118, include commodity futures and that a new future contract is "substantially identical" with a prior contract. The Appellate Court reasoned that the futures contracts were securities because they were pledged with the broker "who advanced the necessary funds to purchase the oil". Any pledged property is a security in that sense, but obviously not all pledged property is a security within the meaning of section 118. Furthermore, the reasoning is unsound since the broker does not advance the funds necessary to purchase the commodity. The
83 buyer of a commodity future contract puts up a margin with his broker which is a percentage of the purchase price called for in the contract. That margin is held as security until the contract is closed out. If the purchaser of the contract takes delivery of the corn, he then pays the additional amount called for under the contract, but if he sells the contract he gets credit for the margin which he put up with his broker, plus the price at which the broker sold the contract, and neither he nor the broker makes any further payment on account of the purchase price which that particular purchaser owed under the contract. The Appellate Court also reasoned that the
84 futures contract was "a security" because "the petitioner had no more than a document giving it the right to demand and receive property not in its possession". The owner of a commodity future has no right to demand the property except at maturity upon payment of the contract price. All executory contracts giving a person the right to demand and receive property upon the payment of a contract price are not to be regarded as securities within the meaning of section 118.

Furthermore, a new future commodity contract is not "substantially identical" with any prior contract even though the quantity involved in each is identical. It would be purely accidental if the new contract was with the same

party as the one who had agreed to sell the commodity in the earlier contract. The price would probably be different and the delivery date would certainly be different. The United States District Court, Middle District of Georgia, on April 11, 1940, in the case of *Valley Waste Mills* v. *Page*, 27 A. F. T. R. 957, held, in regard to cotton futures, that the new contract was not "substantially identical" with the old one under such circumstances and, with that, we agree. Cf. section 117(1)(3)(B) as added by section 211, Revenue Act of 1950. Cotton futures were considered by the Circuit Court of Appeals for the Fifth Circuit in *Valley Waste Mills* v. *Page*, 115 Fed. (2d) 466, certiorari denied 312 U. S. 681, and it is apparent from the opinion there that such a future is not a security in any generally recognized sense but simply a contract between two parties in which one agrees to supply at a designated time in the future a stated quantity and quality of goods, upon payment of a stated price and on which a part of the contract price, called a margin, has been paid by the buyer to his broker to bind him until the sale is consummated or the contract is sold. See also *Rosenthal* v. *Brown*, 247 N. Y. 479, 160 N. E. 921. Cf. *Pinellas Ice & Cold Storage Co.* v. *Commissioner*, 287 U. S. 462; *Commissioner* v. *Seagall*, 114 Fed. (2d) 706; *Commissioner* v. *Sisto Financial Corporation*, 139 Fed. (2d) 253. Corn futures are not different in this respect from cotton futures. Furthermore, corn futures, such as are here involved, are for such short periods and are of such a peculiar character that they do not lend themselves to the evil which section 118 was intended to prevent. Sales of such contracts are completed transactions when made, the gain or loss is recognized at that time, and there is no postponement of the gain or loss for tax purposes. *Valley Waste Mills* v. *Page*, *supra*; *Robert M. Harriss*, 44 B. T. A. 999, affirmed 143 Fed. (2d) 279. Section 118 has no application in this case.

Findings of Fact and Opinion.

88 The parties have stipulated that certain adjustments are to be made in computing the tax liability of the petitioner.

Decision will be entered under Rule 50.

(Seal)

Decision.

[SAME TITLE.]

89

The parties filed an agreed computation on June 8, 1953, pursuant to the Court's Findings of Fact and Opinion promulgated February 20, 1951: Therefore, it is

ORDERED and DECIDED, that there is a deficiency ir income tax for the year 1940 in the amount of $80,731.19.

(Signed) J. E. MURDOCK
Judge

90 ENTERED JUN 15, 1953

Enter:

(Seal)

Stipulation of Facts.

91

[SAME TITLE.]

It is hereby stipulated by and between the parties hereto through their attorneys that the following facts may be taken to be true for the purposes of this proceeding without prejudice to the rights of either party to introduce other and further evidence not inconsistent herewith:

1. Petitioner is a corporation organized under the laws of the State of New Jersey on February 6, 1906, with its principal office at 17 Battery Place, New York 4, N. Y. 92

2. Its consolidated income tax return for the calendar year 1940 was filed with the Collector of Internal Revenue, Second District of New York.

3. The deficiency letter (a copy of which is annexed to the petition) was mailed to petitioner on June 24, 1948.

4. The taxes in controversy are income taxes. The amount of the deficiency asserted by respondent in his notice of deficiency is $163,804.78, while petitioner claims that it has overpaid its taxes for the year 1940. 93

5. Petitioner is a nationally known corporation engaged in the manufacture and sale of corn products, including starches, syrups, oils, and other corn derivatives.

6. Its products are sold to subsidiaries, affiliated companies, and to outside customers.

7. During the year 1940 petitioner derived a net profit of $680,587.39 from the purchase and sale of corn futures contracts.

94 8. This profit of $680,587.39 was treated in petitioner's tax return for the year 1940 as a reduction of "Cost of Goods Sold." In its tax returns for prior years the petitioner treated the gains or losses resulting from purchase and sale of corn futures contracts as a reduction of, or as an addition to, cost of sales.

9. It had been the custom of petitioner for a number of years prior to 1940 to purchase corn futures contracts.

10. All corn futures contracts purchased and sold during 1940 were purchased and sold through members of a
95 recognized Commodity Exchange.

11. Such contracts were subject to the rules, regulations and customs of the Commodity Exchange where the trades were made.

12. The cost of the corn futures purchased by petitioner, which contracts were sold during 1940, and which were held for a period of not more than 18 months, was $680,387.39 less than their selling price (computed without the application of Section 118 of the Internal Revenue Code).

96

13. The basis of the corn futures contracts purchased by petitioner, which contracts were sold during 1940, and which were held for a period not more than 18 months, was $62,328.10 less than the selling price when their basis and holding period are computed in accordance with the provisions of Section 118 of the Internal Revenue Code; but nothing contained in this paragraph shall constitute a concession by respondent of the legal conclusions that the corn futures contracts in question were "capital assets" within the meaning of Section 117 of the Internal Revenue Code, or that Section 118 applies thereto. See Exhibit 1-A attached hereto.

14. The basis of the corn futures contracts purchased by petitioner, which contracts were sold during 1940, and which were held for a period of more than 18 months, was $202,662.60 more than their selling price when their basis and holding period are computed in accordance with the provisions of Section 118 of the Internal Revenue Code; but nothing contained in this paragraph shall constitute a concession by respondent of the legal conclusions that the corn futures contracts in question were "capital assets" within the meaning of Section 117 of the Internal Revenue Code or that Section 118 applies thereto. See Exhibit 1-A attached hereto. 97

15. The corn futures contracts in question were not subject to depreciation. 98

16. The raw corn storage capacity of petitioner in its own plants during 1940 of 2,303,000 bushels was less than three weeks' supply. The daily grind capacity of petitioner during 1940 was 147,700 bushels.

17. The annexed schedule (marked Exhibit 2-B) shows the monthly purchases of raw corn by petitioner from January, 1938 to December, 1940, inclusive. 99

18. The annexed schedule (marked Exhibit 3-C) shows the monthly purchases of corn futures contracts by petitioner from January, 1938 to December, 1940, inclusive, including the number of contracts, the number of bushels and the maturity dates, which futures contracts were disposed of by sale.

19. The annexed schedule (marked 4-D) shows the monthly purchases of corn futures contracts by petitioner from October, 1937 to December, 1940, inclusive, including the number of contracts, the number of bushels and the

100 maturity dates, under which contracts delivery of the corn was taken.

20. The annexed schedule (marked Exhibit 5-E) shows the monthly sales of corn futures contracts by petitioner from January, 1938 to December, 1940, inclusive, including the number of contracts and the number of bushels.

21. It is agreed that the amount of the credit for foreign taxes shall be determined and effect given thereto under Rule 50.

101 22. It is agreed that the net taxable income as shown in the notice of deficiency shall be increased by the sum of $9,975.42, representing an embezzled amount deducted in the return for which the petitioner has been reimbursed by insurance, and effect will be given thereto under Rule 50. The respondent hereby asserts claim for any increased deficiency resulting therefrom.

23. It is agreed that by the use of certain terms in the stipulation and exhibits, which connote the purchase and sale of corn futures contracts, the parties have used
102 trade terms and by such use do not intend to suggest the legal consequences flowing from such transactions.

JAY O. KRAMER
Attorney for Petitioner

(Signed) CHARLES OLIPHANT
RPH
Chief Counsel,
Bureau of Internal Revenue

EXHIBIT 1-A, ANNEXED TO STIPULATION OF FACTS.

CORN PRODUCTS REFINING COMPANY

SUMMARY OF ADJUSTMENTS OF CAPITAL GAINS OR *LOSSES* RESULTING FROM THE APPLICATION OF THE WASH SALE PROVISION OF THE INTERNAL REVENUE CODE, SECTION 118, TO TRADING IN CORN FUTURES CONTRACTS

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
	Contracts Sold		Selling Expenses			Book Profit or *Loss* Exclusive of Tax			Adjustment of Book Profit or *Loss* Through Application of Section 118, I. R. C.						
Year	Sales Price	Purchase Price	Commission	Tax	Book Profit or *Loss*	Total Book Profit or *Loss* (See Schedule I, Columns 8, 9 and 10)	6 Months and under	6 to 18 Months	Wash Losses (Add'l. Costs)	6 months and Under	6 to 18 Months	18 to 24 Months	Over 24 Months	Total Adjusted Profit or *Loss*	Wash Losses (Disallowed)
Domestic—United States															
1936	$ 589,900.00	$ 506,668.75	$ 700.00	$ 177.12	$ 82,354.13	$ 82,531.25	$ 82,531.25	$ —	$ —	$ 82,531.25	$ —	$ —	—	$ 82,531.25	$ —
1937	3,660,475.00	3,093,106.25	4,100.00	1,099.83	562,168.92	563,268.75	182,193.75	381,075.00	1,893.75	183,600.00	381,075.00	—	—	564,675.00	3,300.00
1938	9,434,281.25	10,229,806.25	19,937.57	701.46	*816,164.03*	*815,462.57*	*599,240.70*	*216,221.87*	421,593.80	10,606.24	*70,049.99*	—	—	*59,443.75*	1,177,612.62
1939	6,950,075.00	7,357,100.00	17,412.54	—	*424,437.54*	*424,437.54*	92,453.09	*516,890.63*	1,798,862.68	*2,350.00*	*220,121.90*	*23,453.13*	1,375.00	*244,550.03*	1,978,750.19
1940	8,866,006.25	8,167,637.50	17,781.36	—	680,587.39	680,587.39	192,271.81	488,315.58	1,341,067.36	*34,384.39*	96,712.49	1,393.75	*204,056.35*	*140,334.50*	520,145.47

Year 1940

Held less than 18 months

Column (10)	$ *34,384.39*
Column (11)	96,712.49
Per Par. 13 of Stipulation	62,328.10

Held more than 18 months

Column (12)	1,393.75
Column (13)	*204,056.35*
Per Par. 14 of Stipulation	$202,662.60

[Figures in italics were red in original.]

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EXHIBIT 2-B, ANNEXED TO STIPULATION OF FACTS.

CORN PRODUCTS REFINING COMPANY

BUSHELS OF CORN PURCHASED AND RECEIVED AT PLANTS BY MONTHS FROM 1938 TO 1940, INCLUSIVE

Year	Month	Bushels of Corn
1938	Jan.	3,064,477.28
	Feb.	2,879,397.48
	Mar.	2,368,563.32
	Apr.	3,055,833.32
	May	2,685,153.32
	June	2,736,779.36
	July	3,289,083.12
107	Aug.	3,288,061.44
	Sept.	2,712,331.24
	Oct.	3,445,492.48
	Nov.	3,278,543.52
	Dec.	2,847,057.28
	Total	35,650,773.16
1939	Jan.	3,037,691.24
	Feb.	2,440,180.20
	Mar.	2,446,591.44
	Apr.	3,357,578.32
	May	3,887,365.40
	June	2,709,739.36
	July	2,345,003.32
	Aug	3,309,002.28
	Sept.	3,658,137.48
	Oct.	3,887,427.08
108	Nov.	2,687,371.04
	Dec.	3,040,782.08
	Total	36,806,869.24
1940	Jan.	3,080,950.40
	Feb.	3,640,226.16
	Mar.	2,429,236.44
	Apr.	3,378,374.56
	May	3,627,996.04
	June	3,184,761.04
	July	2,806,706.04
	Aug.	2,554,081.44
	Sept.	3,354,588.52
	Oct.	3,016,839.46
	Nov.	2,669,977.08
	Dec.	3,478,672.08
	Total	37,222,409.26

EXHIBIT 3-C, ANNEXED TO STIPULATION OF FACTS.

CORN PRODUCTS REFINING COMPANY

ANALYSIS OF CORN FUTURES CONTRACTS PURCHASED AND SOLD YEARS 1938 THROUGH 1940

File 141.8 Page	1938 Purchases Month	No. of Contracts	M. Bu.	MATURITY May, 1938 No. of Contracts	M. Bu.	July, 1938 No. of Contracts	M. Bu.	September, 1938 No. of Contracts	M. Bu.	December, 1938 No. of Contracts	M. Bu.	May, 1939 No. of Contracts	M. Bu.	July, 1939 No. of Contracts	M. Bu.	September, 1939 No. of Contracts	M. Bu.
44	January	93	1,670	13	265	1	40	79	1,365								
48	February	57	1,165	4	75	1	50	52	1,040								
52	March	71	1,945			3	115	63	1,750	5	80						
57	April	17	245					14	220	3	25						
58	May	51	1,205					19	435	32	770						
61	June	49	1,165			1	10			48	1,155						
65	July	150	3,960					5	1,050	112	2,095	33	815				
75	August	182	4,155							14	135	168	4,020				
87	September	97	2,080									89	1,975	8	105		
93	October	28	680									7	110	19	470		
95	December	29	1,405							2	100					29	1,405
		824	19,675	17	340	6	215	232	5,860	216	4,360	297	6,920	27	575	29	1,405

File 141.8 Page	1939 Purchases Month	No. of Contracts	M. Bu.	July, 1939 No. of Contracts	M. Bu.	September, 1939 No. of Contracts	M. Bu.	December, 1939 No. of Contracts	M. Bu.	May, 1940 No. of Contracts	M. Bu.	July, 1940 No. of Contracts	M. Bu.	September, 1940 No. of Contracts	M. Bu.
99	January	60	2,495			60	2,495								
106	February	5	65			5	65								
106	March	16	535			16	535								
107	April	27	805	1	15	26	790								
110	May	1	10	1	10										
110	June	11	305					11	305						
111	July	81	1,640					13	215	68	1,425				
115	August	133	3,745							133	3,745				
126	September	100	2,160					7	190	75	1,620	18	350		
132	October	59	605							1	5	58	600		
134	November	53	1,195									53	1,195		
137	December	47	910									37	660	10	250
		593	14,470	2	25	107	3,885	31	710	277	6,795	166	2,805	10	250

File 141.8 Page	1940 Purchases Month	No. of Contracts	M. Bu.	July, 1940 No. of Contracts	M. Bu.	September, 1940 No. of Contracts	M. Bu.	December, 1940 No. of Contracts	M. Bu.	May, 1941 No. of Contracts	M. Bu.	July, 1941 No. of Contracts	M. Bu.
141	January	89	1,720	11	115	77	1,600	1	5				
145	February	34	625	7	50	27	575						
147	March	33	440	1	5	32	435						
148	April	69	1,505			69	1,505						
153	May	74	1,465			74	1,465						
161	June	30	595					30	595				
162	July	2	100							2	100		
163	August	51	905					1	5	50	900		
165	September	34	475					14	105	18	355	2	15
167	October	21	295					3	40	1	5	17	250
		437	8,125	19	170	279	5,580	49	750	71	1,360	19	265

EXHIBIT 4-D, ANNEXED TO STIPULATION OF FACTS.

CORN PRODUCTS REFINING COMPANY

ANALYSIS OF CORN FUTURES CONTRACTS UNDER WHICH DELIVERY OF CORN WAS TAKEN YEARS 1937 TO 1940, INCLUSIVE

		Purchases			DELIVERY																					
					May, 1938			July, 1938																	
Year	Month	No. of Contracts	M. Bu.	Value	No. of Contracts	M. Bu.	Value	No. of Contracts	M. Bu.	Value																
1937	Oct.	15	275	$ 167,256.25	15	275	$158,956.25																			
	Nov.	62	780	445,968.75	37	505	281,468.75	25	275	$ 155,712.50																
	Dec.	12	160	93,725.00	7	55	29,453.75	5	105	61,462.50																
		89	1215	706,950.00	59	835	469,878.75	30	380	217,175.00																
					May, 1938			July, 1938			September, 1938			December, 1938			March, 1939			May, 1939			July, 1939		
1938	Jan.	22	345	207,443.75	11	260	131,675.00				11	85	$ 43,237.50												
	Feb.	9	100	61,287.50							9	100	51,575.00												
	Mar.	4	155	98,037.50							4	155	79,675.00												
	Apr.	3	120	75,062.50							3	120	61,350.00												
	May	18	755	434,037.50	14	560	315,181.25				4	195	99,450.00												
	July	9	400	233,381.25				4	200	116,143.75															
	Aug	49	1230	641,187.50										5	200	$ 95,575.00									
	Sept.	27	510	264,025.00													8	500	$235,025.00	41	730	$349,312.50			
	Oct.	23	705	353,006.25																27	510	244,025.00			
	Nov.	28	655	335,275.00																			23	705	$334,875.00
																							28	655	310,775.00
		192	4975	2,702,743.75	25	820	446,856.25	4	200	116,143.75	31	655	335,287.50	5	200	95,575.00	8	500	235,025.00	68	1240	$593,337.50	51	1360	$645,650.00
					May, 1939			July, 1939			September, 1939			December, 1939			May, 1940								
1939	Jan.	27	730	397,306.25							27	730	362,687.50												
	Feb.	10	140	68,906.25							10	140	79,350.00												
	Mar.	11	165	80,206.25							14	165	82,537.50												
	Apr.	19	525	263,331.25				9	285	134,912.50	10	240	109,600.00												
	May	15	755	383,293.75	5	445	224,737.50	10	310	146,650.00															
	Sept.	11	285	148,475.00																					
	Oct.	17	165	80,893.75										6	200	103,162.50	5	85	53,125.00						
	Dec.	4	100	52,250.00										2	10	5,212.50	15	155	100,055.00						
														4	100	52,437.50									
		114	2865	1,474,662.50	5	445	224,737.50	19	595	281,562.50	58	1275	634,175.00	12	310	$160,812.50	20	240	$153,180.00						
					July, 1940			September, 1940			May, 1941														
1940	Jan.	5	30	17,018.75	5	30	20,100.00																		
	Feb.	1	10	5,475.00	1	10	6,700.00																		
	May	3	55	36,912.50				3	55	34,512.50															
	Aug.	6	50	27,168.75							6	50	33,937.50												
	Sept.	6	85	51,737.50				1	55	34,675.00	5	30	20,662.50												
	Oct.	3	20	11,412.50							3	20	13,775.00												
		24	250	$ 149,725.00	6	40	$ 26,800.00	4	110	$ 69,187.50	14	100	$ 68,375.00												

EXHIBIT 5-E, ANNEXED TO STIPULATION OF FACTS.

115

CORN PRODUCTS REFINING COMPANY

SALES OF CORN FUTURES CONTRACTS BY MONTHS YEARS 1938 THROUGH 1940

Year	Month	Number of Contracts	M. Bushels
1938	Jan.	—	—
	Feb.	—	—
	Mar.	49	1,500
	Apr.	28	475
	May	38	755
	June	55	1,250
	July	185	4,050
	Aug.	164	3,795
	Sept.	111	2,480
	Oct.	49	1,035
	Nov.	29	655
	Dec.	47	1,405
	Total	755	17,400
1939	Jan.	139	3,275
	Feb.	10	205
	Mar.	55	925
	Apr.	59	1,330
	May	—	—
	June	14	355
	July	26	1,265
	Aug.	68	3,035
	Sept.	51	1,230
	Oct.	27	375
	Nov.	62	1,275
	Dec.	24	910
	Total	535	14,180
1940	Jan.	56	1,405
	Feb.	17	410
	Mar.	12	360
	Apr.	92	2,390
	May	49	665
	June	104	1,845
	July	159	3,000
	Aug.	91	1,910
	Sept.	88	1,620
	Oct.	39	790
	Nov.	9	100
	Dec.	12	100
	Total	728	14,595

116

117

118 **Report of Proceedings.**

[SAME TITLE.]

70 East 45th Street,
New York, New York,
Tuesday, June 13, 1950.

(Met, pursuant to notice, at 11:10 a. m.)

BEFORE:

119 HON. J. EDGAR MURDOCK, *Judge.*

APPEARANCES:

JAY O. KRAMER, Esq., 10 East 40th Street, New York, N. Y., appearing on behalf of petitioner

SAMUEL MCCAIN, Esq., 17 Battery Place, New York, N. Y., appearing on behalf of petitioner

WALT MANDRY, Esq., (R. P. Hertzog, Division Counsel,
120 Bureau of Internal Revenue), appearing for the respondent.

PROCEEDINGS

The Clerk: Docket No. 20399, Corn Products Refining Co.

Mr. Kramer: J. O. Kramer, for the petitioner.

Mr. Mandry: Walt Mandry for the respondent.

Mr. Kramer: Petitioner is ready.

The Court: All right, you may proceed. I have read the petition in this case and from that I gather that the one issue relates to whether profits and losses for 1940,

which is the only year before the Court, profits and losses 121
on corn futures should be treated as capital gains and losses, or whether they are to be treated as ordinary income and ordinary losses.

The other issue has to do with, you claim, the Commissioner's understating the foreign tax credit. I get that much out of the pleadings.

Mr. Kramer: As to the latter issue, that is no longer a matter of dispute. The only problem there is the computation under Rule 50, after the correct income from domestic sources has been determined. I don't think there is any question.

The Court: That will iron itself out under Rule 50, if 122
I decide the first point.

Mr. Mandry: That is so stipulated in our stipulation.

Mr. Kramer: As your Honor has already indicated, this is a proceeding to determine the correct tax liability of the petitioner for the calendar year 1940. In his 90-day letter, the Commissioner has determined there was a tax deficiency of $163,804.78. On the other hand, the petitioner claims there is an overpayment. The dispute arises not out of any adjustments made in the 90-day letter, but out of the denial of refund claim by the respondent with respect to corn futures situation wherein the petitioner 123
claims that the transactions were capital transactions resulting in capital gains and capital losses and the respondent has taken the position that they resulted in ordinary income or regular business deductions.

I might point out that there was an additional item of $9,975.42 which has been added to net income since the 90-day letter was issued. We are stipulating to that. It arises out of an insurance refund from a previously deducted item and therefore that deduction is no longer in effect. That is contained in the stipulation. The case will be presented to the Court on a stipulation of facts which

124 will cover most of the mathematical problems involved here, plus the testimony of a series of witnesses.

The basic issue has already been stated and that is whether capital gains and capital losses. There is a further issue, however, and that is whether the wash sales provisions applies to these types of transactions, Section 118. We will offer some testimony on that score as well.

I would like to outline for the Court very briefly the general background of this picture. The petitioner is probably the largest user of raw corn in the United States. It is in the business of manufacturing corn derivatives
125 from raw corn, including starches, cerelose, which is a corn sugar, oils, feed; feed and oils are byproducts. It does not and has not sold raw corn. It is not in the business of buying raw corn and selling it.

Starting in 1932 the company, for reasons which will be explained by the witnesses, commenced to purchase futures contracts on the Chicago Board of Trade. In other words, it commenced to establish a long position in futures contracts. This position was gradually increased during the years.

As your Honor is aware, the farm belt suffered severe droughts during the years 1934 and 1936. This had a
126 striking effect on the entire picture as faced by petitioner. One of petitioner's products, his sugar, is derived from corn. It competes with cane and beet sugar. The petitioner found itself in 1937, because of the tremendous rise in the price of corn, due to the droughts, with this situation: it was selling its cerelose at a loss. Its cost was too high. It could not compete with cane sugar on an equal basis because of the rise of corn due to the droughts.

At that point the petitioner decided to expand its corn futures' position. There will be testimony as to the size of the anticipated position which would be taken to fix the cost of cerelose, as nearly as may be.

Now, that program was anticipated by the commence-

ment of buying a substantial amount of corn futures in 1937, above and beyond what had been previously purchased in early years. 127

Unfortunately, from petitioner's point of view, a dispute arose with the commodities exchange authority as to the size of that position. We will show by competent testimony what that dispute was and what the outcome of it was. It is sufficient for the purposes of the opening statement to merely state that an agreement was reached with the commodities exchange people as to the size of that position and as to the manner of reporting our weekly position to the commodity exchange people. It will be pointed out that it was more economical for the petitioner 128 to purchase futures contracts rather than to try and buy raw corn in excessive quantities.

The annual grind of petitioner during 1940 was approximately 37 million bushels and was approximately 35, 36 million bushels in the two previous years respectively. It has been stipulated that the raw corn storage capacity of the petitioner in the year 1940 was approximately 2,300,000 bushels. That should be taken against the figure of 37 million being the annual grind. It was impractical from a monetary point of view to buy the difference in raw corn, even if it were available, and store it in elevators. Consequently, it was found that by buying futures, the company 129 could assure itself in the future when it required delivery, that it could obtain raw corn on the maturity of the corn futures contracts.

The stipulation will indicate that a large percentage of these corn futures contracts were carried out; delivery was taken on the corn itself. This was not speculation, where the position was taken merely for a speculative profit. Actual delivery was taken on occasion.

I would like briefly to discuss or to mention the position with respect to hedging because there is the issue in the case. Petitioner does not want to turn this trial into a

130 lecture on semantics. We are going to define hedging as the Tax Court has done and as the Circuit Court of Appeals has done and as the Commissioner has done in the General Counsel's memorandum, to constitute only one of two things. A hedge, technically, is either a short sale against inventory, according to the Tax Court's definition, or secondly, is the establishment of a long-term futures position against forward sales commitments. I believe we can narrow the issues in this case to the latter part of the definition.

I don't believe that respondent is contending that petitioner was hedging in the form of short sales against
131 inventory. We have no evidence of any such short sales in this case so far as I can find. So this trial should mainly confine itself to whether the futures contracts position which petitioner established during these years was a hedge against forward sales commitments. That necessitates a study of what the forward sales policy of this company was. We will produce certain witnesses who will testify that the policy of the company with respect to the forward sales was not to commit the company beyond 30 days whereas the futures contracts may run as much as nine months.

132 Furthermore, we will show that even when the company committed itself to 30 days forward sales, the buyer obtained not the price at the date of contract, but the price at the date of delivery, so that the inference being that as of the date of the contract the price was unknown, the final price was unknown to the seller and consequently it was mathematically impossible for him to hedge against that price.

There were certain minor exceptions to this sales policy which will also be brought out by witnesses. They had to do with two factors, the canning industry on the Pacific Coast and an offer which was made on January 15, 1940, in the cerelose industry, or to users of cerelose. I wanted

to explain very briefly what they were so the Court will understand what the witnesses will testify to. 133

An offer was made to the canning industry on the West Coast whereby the company guaranteed to the industry to deliver a certain quantity of cerelose, which is corn sugar, at a price which would be the better of two prices, either the date of contract or the date when they ordered out the merchandise. The quantity was at the option of the purchaser. The price was as of the date of arrival or delivery and consequently it was again mathematically impossible to hedge against that situation since it was not known what percentage of the contract the buyers would take. We will show, for example, that in the year 1940 approximately 60 percent of these so-called contracts were canceled, were not carried out by the purchaser. Consequently, your Honor will realize the difficulties under which petitioner would have been had it tried to hedge. 134

The second exception to the general rule had to do with a certain offer made in the cerelose situation on January 15, 1940, and again the buyer was given the same privileges. It was an option on the part of the buyer to take up to a certain amount for a period up through June 30, 1940, a certain monthly amount and if he didn't take it, the balance was canceled. The price again was fixed as of the date of arrival or delivery and consequently it is petitioner's contention that there was no hedging there. 135

Now there is a third situation which I think we ought to mention, although it is not an exception to the general sales policy. It is something entirely apart and that is the situation involving the Keever and Huron contracts. A long time prior to this period, the company entered into two agreements, one with the Keever people and the other with the Huron milling people, whereby the company agreed that it would do custom milling for those two customers at a fixed price. This price was arrived at by ascertaining the price of corn, the cost of labor and so on.

136 In other words, the profit of the company was already fixed in advance on that. It was a custom milling job and consequently there was no occasion for this petitioner to hedge against a situation. It was merely performing a service for these two mills.

Consequently, it is petitioner's position that these two contracts do not affect the situation in any manner.

Among the exhibits which we will offer will be a graph which will show, we believe, quite a specifically what the total futures position of petitioner was at any moment during any of the years involved.

137 When I say "any of the years involved," I mean from 1938 through to 1941. The reason I say years are involved, although the tax year is 1940, the wash sales positions carry back into 1938 and the futures purchased in 1940 are executed in 1941. This graph will show that there was no correlation, we believe, between the sales program of petitioner and its futures position.

Mr. Mandry: May it please the Court, in view of the general statement that Mr. Kramer has made, I am quite sure your Honor is familiar with the general background of this case. So I will state merely the respondent's position.

138 It is the respondent's position that an operating company, such as this, that had to assure itself of a supply of corn in the future and constantly from month to month, because the storage supply was only about three weeks, that it was necessary for them to prevent a possible business loss to be assured at all times that they would have an ample supply of corn in the future and it is our contention that this is a hedge against that loss or is a business deduction and therefore not within the ambit of Section 117.

Our position is, as a subhead, and that is as Mr. Kramer has explained, that there were certain forward sales, and I suppose the exact nature of those will depend a great

deal on the evidence. Certainly, to the extent that they 139
were forward sales, any purchase against those would, I believe, come within what Mr. Kramer's own definition of hedging is.

The other point is whether the wash sales provisions apply. It is our contention that the word "securities" as used in that section does not embrace futures contracts of this kind. I think that is sufficient.

The Court: I have listened and read, but I am not sure I am with you even yet. Let us take up wash sales proposition first. Mathematically how does that work out; that the petitioner wants to disregard certain transactions be- 140
cause they came in within the wash sales position, is that it?

Mr. Kramer: If petitioner has a loss in a previous year and within the 30-day period, either before or after, acquired a substantially similar contract, we claim that that loss must be disallowed and added to bases for future years.

In other words, that carries on through the years.

The Court: In other words, what you regard as wash sales in prior years disregarded, you will get a larger deduction in the tax year?

Mr. Kramer: We will have a higher basis in the tax 141
year.

The Court: In a larger loss or smaller profit?

Mr. Kramer: That is correct.

The Court: In the tax year do you have a net profit from these transactions or net loss?

Mr. Kramer: During the tax year, without the provisions of Section 118, we have a profit.

The Court: In other words, the net result of your operations in this particular field during the tax year resulted in a plus figure instead of a minus figure.

Mr. Kramer: That is right. That is all covered in the stipulation.

The Court: I understand. I just wanted myself straight-

142 ened out so that there isn't something here that I don't understand.

Mr. Mandry: I may add, although it is in the stipulation, that the taxpayer in the taxable year, as Mr. Kramer stated, in effect reported the net profit as an ordinary income and it has consistently done that in all prior years.

The Court: And also that the adjustment wasn't made in the notice of deficiency but you are asking for it nevertheless?

Mr. Kramer: I would like to point out that the taxpayer has consistently kept its books and records and we will have a witness testify to that effect, whereby these
143 transactions were applied to cost of goods sold. However, in the years following 1940, the Commissioner took a number of cases to the Tax Court and other Courts, contending that these transactions were capital transactions where the taxpayers were claiming to have ordinary losses.

Consequently, seeing those decisions, this taxpayer decided if they were capital transactions for those taxpayers' purposes, they were capital transactions for ours.

The Court: I suppose I have to decide it no matter how it happened to arise anyway.

We will recess for five minutes.

144 (Short recess taken.).

The Court: You may proceed.

Mr. Kramer: If it please the Court, through Mr. Mandry's kind cooperation, we have arrived at a substantial stipulation of facts here which we would now like to offer.

The Court: The stipulation may be received.

Mr. Kramer: Attached to the stipulation are five exhibits running from 1-A through 5-E, inclusive.

At Mr. Mandry's request, two additional schedules were prepared subsequent to the preparation of the stipulation, showing a weekly analysis of the stock on hand of petitioner from July 1, 1938, to the end of the year 1940. This is broken down into two separate schedules, one having to

do with the cerelose bulk and package sales of petitioner and the other having to do with the feed or byproducts of petitioner. 145

With the Court's permission, we would like to offer these two schedules as one exhibit in evidence as 6-F.

The Court: They are admitted.

(Whereupon, the documents were received in evidence as Joint Exhibit 6-F.)

Mr. Kramer: Since the preparation of the stipulation of facts, petitioner has prepared a graph running from the year 1938 through the year 1941, showing the long position of petitioner at any given time as against the so-called sales commitments. This makes graphic what has previously been stipulated to in the other exhibits. 146

Mr. Mandry: No objection.

The Court: It is admitted.

(Whereupon, the document was received in evidence as Joint Exhibit 7-G.)

Mr. Kramer: At this time I would like to call Mr. Praeger.

Whereupon, 147

ALWIN H. PRAEGER

was called as a witness on behalf of the petitioner, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Kramer:

Q. State your name and address for the record. A. Alwyn H. Praeger, 425 Second Street, Oradell.

148 Q. What is your present employment? A. I am director of purchases for Corn Products Refining Co.

Q. How long have you been employed by the petitioner? A. Well, this November 10 I will have been employed 40 years.

Q. What was your position with the company during the period from 1936 to 1940? A. I was assistant to Mr. Campbell. I was probably general purchasing agent at that time.

Q. Mr. Campbell is here in Court today? A. He is.

Q. What were your specific duties at that time? A.
149 We were directing and supervising all of the purchases of the company including corn.

Q. Now, to your knowledge, when did the program of purchasing corn futures commence? A. Well, we started in, I think, 1932, the early part of 1932.

Q. What was the volume at that time compared to later days? A. It probably ran 3 to 5 million bushels at one time until 1937 when we stepped up our purchases.

Q. What was behind the corn program? Why did you buy corn futures at that time? A. In 1937 you are referring to?

Q. No, in the previous period. A. Well, in 1932 up to
150 1937, it was just part of our general corn program, where we held a greater or lesser amount, depending on the price of corn at a given time.

Q. Not to lead you too much, but if you found that corn was cheap, you would buy corn futures? A. That is correct.

Q. It has already been made part of the stipulation that the storage capacity of petitioner during the year 1940 and we assume during early years, was approximately was 2,300,000 bushels. A. That is right.

Q. Could you have stored corn outside of the company's elevators? A. We could have, yes.

Q. You could have purchased and done so? A. Yes.

Q. Would that have been expensive? A. That would 151
have been very expensive.

Q. Will you explain in what way it would have been expensive? A. Well, in the first place we would have a warehouse charge which amounts to about a cent and a half a month and there may be—is there an elevator charge—I am not sure whether there is an elevator charge to that or not, but depending upon the time we would have corn in storage, it may cost us five or ten cents a bushel more.

Q. Where would you have obtained the financing for such a program? A. We get it right out of our treasury.

Q. It has been stipulated that during the year 1940 the 152
corn used by the company ran to about 37 million bushels. What would have happened had you tried to finance that all at one time? A. That would have been a tremendous job.

Q. Exactly. Then your testimony is that it was more practical to purchase corn futures rather than to buy raw corn and store it outside of the company's warehouses? A. That is correct.

Q. Do you recall the droughts of 1934 and 1936? A. I do.

Q. What was their effect on the price of corn? A. Well, 153
it increased the price of corn materially.

Q. Are you familiar with the product of the company known as cerelose? A. Yes, sir.

Q. What is cerelose? A. Cerelose is a sugar derived from corn.

Q. What are the products on the market with which it competes? A. Cane and beet sugar.

Q. Now, did the droughts of 1934 and 1936 affect the competitive position of cerelose? A. It certainly did. It increased our manufacturing cost to the extent that we were losing money on each sale of sugar.

Q. Of cerelose sugar? A. Of cerelose sugar.

154 Q. Did the company take steps thereafter to protect itself against that situation? A. We attempted to protect ourselves by establishing a policy of accumulating some 12 million bushels of futures contracts. It was our original intention at the time to accumulate this amount until about June or July and by that time, if there were no indications of a short crop of corn, we would liquidate our position and start in accumulating again during harvest time. If there was a short crop, we would liquidate them gradually with the manufacture of sugar each day or week.

Q. Did anything happen which interfered with that program as you have outlined it? A. Well, it took us from 155 the fall of 1937 through practically all of 1938 before we had accumulated our position and we had a little interference in the commodity exchange ruling. I think that happened in July of 1938.

Q. When you say you had "a little interference," what do you mean? A. I mean that—I don't recall the number of the bill—but the essence of it was that we were permitted to have only 2 million bushels over and above our sales commitments.

Q. What happened in 1939? A. Well, in 1939, the war came on and we changed our program at that time. We 156 didn't feel as though we needed this protection. While the price of corn increased materially, so did the price of sugar. There were also no indications of a shortage of crops in that year, so we liquidated our position in 1940.

Q. I show you a Joint Exhibit 7-G. Will you indicate to the Court on that exhibit the liquidation of this position during the year 1940? A. Well, in February of 1940 we held a position close to 8 million bushels. There was a gradual liquidation from March through to September. We wound up the year with a long position of 2½ million bushels. Wait, this is orders. I am sorry. We wound the year up with a half million bushels, long position.

Q. In other words, you liquidated from 8 million to less

than a half million? A. Less than a half million in 1940. 157

Q. Will you repeat what the cause of that liquidation was so that we can have it made completely clear? A. I don't quite get your question.

Q. Will you repeat to the Court what the basis for that liquidation was?

The Court: I understood him the first time.

Mr. Kramer: I am sorry. I didn't know whether he made himself completely clear. I withdraw the question.

Q. Now, at all times during the years 1938 to 1940, did 158 the company have a long position in corn futures? A. Yes, they did.

Q. At that time, or during that period, did the company make any short sales of corn futures? A. No, they did not.

Q. Was the company thereby taking the risk of a drop in the price of corn? A. There was always that risk.

Q. Did this program which you outlined work to the company's advantage as far as you know? A. No.

Q. What happened? A. Well, I am not sure which year —I think we did show a profit in one of those years, but on the whole there is a definite expense. 159

Q. During those particular years? A. Particularly in 1937, I think it was.

Q. I think the stipulation of facts will show that. Are you familiar with the sales policy of the company? A. Just in a general way. Mr. Mueller is here. He can testify to that.

Q. Did you prepare weekly reports of the company's long position during this period for the commodity exchange authority? A. Yes, we did.

Q. What is the bushel amount of a corn futures contract? A. 5,000 bushels.

160 Q. Do you know what the months are, the contract months of maturity on such a contract? A. The most active months are May, July and December; occasionally March and October.

Q. Confining yourself to the year 1940, do you remember what the months were in that particular year? A. No, I do not. I am not sure whether we traded in March or not.

Mr. Kramer: That is all.

CROSS EXAMINATION

161

By Mr. Mandry:

Q. Mr. Praeger, I believe you stated that in 1932 to 1937 you commenced buying corn futures. A. That is right.

Q. And because of the drought of 1934 and 1936 there were increased prices in raw corn, was there not? A. That is right.

Q. What were you buying these futures to protect? A. The 1937 program.

Q. In 1937 and running up to 1938-39 and 1940? A. We were trying to protect a part of our manufacturing costs.

162 Q. Well, now, you spoke of 1939, because of the war; what war were you referring to? A. World War II.

Q. That didn't start until somewheres later on, so far as the United States is concerned? A. That is right.

Q. What effect did that have on the corn situation in the United States?

The Court: You mean from 1939 to December, 1941?

Mr. Mandry: Yes, your Honor.

A. Well, it eventually increased the price of corn and likewise the price of sugar.

Q. So you have the same reason for buying futures during that period as you did during the period in 1934 to 1936? A. No, in 1939 it was decided that we didn't need that protection. I mentioned that by July of 1939 there were no indications of a short crop. It was also a costly proposition to maintain a long position such as we have had by carrying the futures contracts over from one period to the other and we didn't feel that we should spend that money for that protection. 163

Q. In other words, you were willing to run the risk you thought at that time without buying corn futures? A. That is right.

Q. Now, on Exhibit 7-G, looking at the year 1940, I believe you stated your long position went from 8 million bushels at the beginning of the year to one-half million bushels at the end of the year. A. That is right. 164

Q. Will you look at that exhibit again. What was the amount at the end of the year?

The Court: Of course, the exhibit will show that.

A. It is a million four, Mr. Mandry.

Mr. Mandry: The figures are rather tiny down there. That is true, your Honor, except that the figures are rather tiny down there. 165

Q. You stated that the company never had any short position? A. That is correct.

Q. How did you close out the purchase contracts when you decided not to take the grain and call for it? A. We would sell them at market prices.

Q. You sold what? A. The futures contracts.

Q. Didn't you enter into another contract to sell corn at that time for future delivery or for the same contract months? A. To sell corn, no, sir. We would liquidate our

166 position by selling our long position. In that sense, we were selling it, yes.

The Court: In other words, you had a contract for futures and you gave that contract to somebody else and they paid you for it?

The Witness: That is correct.

Q. You mean to say that when you had a contract to buy corn for December delivery and some time prior to the delivery date, that you actually went out and sold that contract that you had to someone else, is that what you
167 mean to say? A. That is correct.

Q. Are you familiar with the mechanics whereby that is performed? A. No, I am not.

Q. So you are just speaking in terms of the trade when you say you sold a futures contract? A. That is right, sir.

Q. Mr. Praeger, starting out with a bushel of corn, that is 56 pounds, is it not? A. Right.

Q. Can you tell us in pounds the derivatives that you derive from a bushel of corn? A. Well, from a bushel of corn, no, I don't have those figures in my mind, sir.

168 Mr. Kramer: Can you do it on the basis of 100 pounds?

The Witness: 100 pounds, dry basis, I think the starch would be about 62 or 63 percent. Your feed would be around 33 percent. Oil about, well, the difference there, about 3 or 4 percent.

Q. What do you include in the term "feed"? You said "feed." A. Feed and meal, which is a byproduct of our manufacture, and consists of the hulls of the corn and other properties that aren't used in starch or oil.

Q. And that term would include gluten meal? A. Yes, sir.

Mr. Mandry: That is all, Mr. Praeger. 169

The Court: Any further questions?

Mr. Kramer: I just want to ask the witness one question.

RE-DIRECT EXAMINATION

By Mr. Kramer:

Q. Mr. Praeger, did you have this schedule prepared for me for the year 1940? A. You want me to recite this?

Q. Do you recall having this prepared? A. No, I do not recall, personally. 170

Mr. Kramer: No further questions.

RE-CROSS EXAMINATION

By Mr. Mandry:

Q. Mr. Praeger, your company is required to file certain reports with the Department of Agriculture and commodity exchange authority, are you not? A. That is right.

Q. You mentioned something on direct examination that you had a little, I believe you used the word "interference" in 1938. What was that interference that you were referring to? A. If I remember the ruling, it restricted us from having a long position greater than 2 million bushels over our sales commitments. 171

Q. The commodity exchange act provides for that itself, don't you know? A. That I don't know. I am not a lawyer.

Q. Doesn't the act say that you can't have a long position over 2 million? A. I don't know.

Q. What was the trouble you had with the commodity exchange? A. Well, it developed into conference be-

172 tween our attorneys and the commodity exchange. It was just that uncertainty during that time, that we weren't sure of our position and until it was cleared up, why, we were at a loss to know where we were permitted to go.

Q. Did the commodity exchange think you had a long position beyond the trading allowance? A. They did at first, but I am sure our attorneys straightened them out on it.

Q. How did you convince them that you didn't? A. Our attorneys handled the case, sir, and I wasn't sure.

Q. Did you also have some, shall we call it interference in 1940 with respect to your 1939 position? A. I don't
173 recall that, sir.

Q. Well, as a matter of fact, apparently you are not very familiar with what did happen there. A. No, it was handled by our attorneys.

Q. I will ask you one more question. When you were speaking about protecting from losses, was your company in the business of speculating and buying and selling corn futures? A. No, sir.

Mr. Mandry: That is all.

RE-DIRECT EXAMINATION

174

By Mr. McCain:

Q. Mr. Praeger, of course I am quite cognizant that you didn't handle the legal details of this CEA investigation by the Department of Agriculture. The commodity exchange authority at that time was a part of the Department of Agriculture. However, let me refresh your recollection. I think you did prepare and file the reports with the commodity exchange authority? A. Yes, sir.

Q. As a matter of fact, I have here a schedule that you prepared before Mr. Frank Hall who did handle this

matter and I would like to hand you this schedule and 175
one of the commodity exchange act forms and get you to explain just how these were prepared.

Mr. McCain: I think, your Honor, that possibly the thing to do is put in one of these blank forms as an exhibit for the record.

The Court: You have me at a disadvantage at the moment because I don't see any appearance entered for you.

Mr. McCain: It is entered, your Honor. My name is Samuel McClain.

The Court: The file I have doesn't show any- 176
body but Mr. Kramer.

Mr. Kramer: Mr. McCain noted his appearance on the call of the calendar and again at the beginning of this case. If Mr. Mandry will consent, I would like to offer in evidence as an exhibit forms of the commodity exchange authority, No. 204. There are two forms.

Mr. Mandry: No objection, your Honor.

The Court: It is admitted.

(Whereupon, the documents were received in evi- 177
dence as Petitioner's Exhibit 8.)

Mr. McCain: I suggest that that might be handed to the Judge so he can follow the testimony.

By Mr. McCain:

Q. Now, Mr. Praeger, I would like for you to look at this form you prepared December 8, 1939, and explain just how you arrived at the figure that was put under each column. I don't think we are so much interested in the exact figure on any one of these reports as the method of

178 preparation and I suggest you might take from your summary sheet and follow across with that on one of the forms.

Q. In column 3 of this form, we show our corn position, the corn we have paid for and have in our tanks. In column No. 4 we show our filled stock of products that have not been sold. In column No. 9 is the total of our corn stocks and filled stocks. Column No. 11, our sales commitments, those which are on our books at that time. By deducting your long position of corn and products from your sales commitments, we have a net short position shown in column 2. Net is our position of the various
179 futures contracts which, in this particular case, adds up to 8 million bushels.

Q. Now, Mr. Praeger, I would like for you to explain the numbered columns on here and you have entered in various places or under the instructions had to enter a position as one of three things, I believe, either speculative, spreading, or hedging. Will you explain the reason you followed in making the entries on these forms? A. Well, neither one of the headings would cover the operations as I see it. It definitely wasn't a speculative operation nor was it a spreading operation. So we had no
180 choice but to put it under the hedging column.

The Court: What do you describe as a "hedging column"?

Mr. McCain: I think if you turn that over, your Honor, it says you have to designate the instructions.

The Court: Any further questions?

Mr. McCain: Yes, just one or two more, your Honor.

Q. You felt that you did not fit under the speculative classification, not because you considered that you had a

real hedge, but because you considered that you were doing something in the way of protecting a business risk, is that correct? A. That is right. 181

Mr. McCain: That is a little bit leading, Mr. Mandry; I apologize.

Q. The commodity exchange authority on the other hand, I believe, took the position that you were not entitled to take this long position which you would have been allowed to do if it had been hedging, is that according to your recollection? A. Yes, I think that is correct. 182

Mr. McCain: I think that is all, your Honor. Mr. Hall, who handled the legal end of it with the commodity exchange authority is in Court and we can put him on to explain this.

The Court: Were your questions directed to explain the fact that they showed a net short position?

Mr. McCain: No. Mr. Mandry has pointed out in the records that this long position was reported as hedging.

The Court: That is what I don't understand. You say it was reported as hedging, but looking at the form I don't understand why you say that. There is nothing on the front of the form that mentions the word "hedging" that I see. 183

Mr. Kramer: Does your Honor have the long or vertical sheet there?

The Court: Go ahead.

Mr. McCain: I think that Mr. Mandry's point, your Honor, is that these positions were entered in the column "hedging" and the purpose of this testimony is to show that that was the only place that Mr. Praeger, in making out his form, could put

184 these transactions since he did not consider them speculative.

The Court: My question isn't important any more. The form I had didn't show that.

Mr. McCain: One was a daily report and the other a weekly report. No further questions.

Mr. Mandry: No further questions.

The Court: The witness is excused.

(Witness excused.)

Mr. Kramer: Mr. Campbell, please.

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185 D

Whereupon,

CLARENCE L. CAMPBELL,

was called as a witness on behalf of the petitioner, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Kramer:

186 Q. Will you state your name and address for the record? A. Clarence L. Campbell, Greenwich, Connecticut.

Q. Mr. Campbell, what is your present occupation? A. Vice-president and director of the Corn Products.

Q. And how long have you been associated with the company? A. 44 years next month.

Q. During the period from 1936 to 1940, what was your position? A. Well, I was actively in charge of trying to guide the purchases and the policies connected with raw materials.

Q. Was Mr. Praeger, the previous witness, your assistant in that? A. He was.

Q. Now, for the purpose of shortening this trial, if your Honor will accept, and Mr. Mandry will accept, I would like to ask the witness just one question. 187

You have heard Mr. Praeger testify and if the same questions were asked of you, would you testify substantially as he testified? A. Yes.

Mr. Kramer: That is all.

Cross Examination

By Mr. Mandry:

188

Q. Mr. Campbell, you have also heard Mr. Praeger testify on cross-examination that the company was not engaged in speculative practices. Do you agree with that? A. I do.

Q. And that the purchase of corn futures was made to protect the business from loss. Do you agree with that? A. It was made to protect the cost of the raw material that was used for making cerelose sugar. Cerelose sugar is sold in competition with beet and cane sugar, the prices of which are absolutely independent of the prices of corn.

Q. That would be true of some other products, wouldn't it, such as starch? A. Well, I don't think starch would 189 compete with sugar.

Q. But starch competes with starch of other companies, does it not? A. Yes, indeed.

Mr. Mandry: That is all, Mr. Campbell.

Re-direct Examination

By Mr. McCain:

Q. Mr. Campbell, I think the point you were making, which Mr. Mandry and the Court misunderstood, was that

190 cerelose is sold at a differential under cane and beet sugar. Now, Mr. Mandry asked you if the company's starch was not sold in competition with the products of other companies and you answered "yes" which is quite correct. However, you did not intend to give the impression that the price of starch did not fluctuate with the price of corn itself, did you? A. Why certainly it does.

Q. It does fluctuate with the price of corn itself? A. Yes.

Mr. McCain: That is all. I just wanted to clear that up.

191 Mr. Mandry: That is all.

The Court: Witness excused.

(Witness excused.)

Mr. Kramer: Mr. Mueller, please.

Whereupon,

FRED MUELLER

was called as a witness on behalf of the petitioner, and
192 having been first duly sworn, testified as follows:

The Clerk: State your name and address for the record.

The Witness: Fred Mueller, 514 Ridgewood Avenue, Glen Ridge, New Jersey.

DIRECT EXAMINATION

By Mr. Kramer:

Q. What is your present employment? A. Practically retired. However, I am on a consulting basis with Corn Products Refining Co.

Q. When were you first employed by Corn Products? 193
A. 1902, May.

Q. And you were with the company how long until your present retirement? A. 45 years.

Q. You were with the company then during the period 1936 to 1940? A. I was.

Q. What was your then capacity? A. I was manager of bulk sales.

Q. And at the time of your retirement, what was your capacity? A. I was president of the Corn Products Sales Company and general manager of all sales.

Q. You are familiar with the products produced by the company? A. I am. 194

Q. Will you tell the Court roughly what categories they fall into? A. You want me to enumerate our different products?

Q. Not by trade name, but in general categories. If I may lead you for a moment, starches— A. Corn syrups, starches, sugars and cerelose, which is a refined sugar. Do you want the other byproducts made from starches, like dextrin?

Q. To shorten the period of examination, will you classify starches and sugars as the main products and feeds as byproducts? A. That is correct. Starch and corn 195
syrup, which is package syrup, are the main products. Cerelose sugar, which is a refined sugar, is included in the main products. Feed and oil are byproducts.

Q. Do you know the approximate dollar value to be obtained from those general categories? Does the list refresh your recollection for the year 1940? A. Well, I didn't make up these figures, but they do look correct.

Q. Will you state what the correct figures would be, then, in your opinion? A. I say they look correct.

Q. Will you explain to the Court the dollar value of the various products of the company as shown in this memo-

196 randum which you now hold? A. Will you repeat that, please?

Q. Will you explain to the Court the comparative dollar value between the products of the company? A. Well, I don't have that. Yearly average yields, all plants, from commercial corn, No. 2 basis, their values at prices prevailing July 1, Chicago basis—this is 1940—pearl starch in bags, 63.31, will be at $2.80; a hundred pounds equals $1.773. Gluten in bulk 27.13 pounds at $18 a ton, equals 2.44. Oil, 3.14 pounds, at $5 per hundred pounds, .157. Yearly average cost of corn, No. 2 basis, Argo, 100 pounds, $1.126. All plants per hundred pounds, $1.115. Comparative yields, Argo plant only, starch 63.22 pounds, feeds 27.23 pounds, oil 3.13 pounds.

197

Q. In other words, starch was not only the major yield from corn in point of view of content but also in point of dollar sales volume per hundred pounds. Do you understand my question? A. I don't quite get you and I don't have the figure on that.

Q. In other words of any given quantity you just testified that $1.77 went toward the purchase of the starch by the consumer, 24 cents would have gone towards the feed and 15 cents towards the purchase of oil obtained from the raw product? A. That is right. That is the yield you are talking about?

198

Q. That is right. A. Starch, of course, is used in making the other products like corn syrup and cerelose.

Mr. McCain: I think I might just clear Mr. Mueller up on this. We were asking him when he was in the office the value of the products derived from 100 pounds of corn and you gave instructions that this memorandum be prepared. You didn't know offhand. I don't think you realize that this is what this was.

The Witness: That is right, I did not.

Mr. McCain: But that is what it is, the value of 199
the products of 100 pounds of raw corn. So the yield figures times the price would give you the price of those products.

Mr. Kramer: I would like to offer in evidence the memorandum which was prepared, and ask your Honor for permission to withdraw it and make a photostat.

Mr. Mandry: No objection.

The Court: It is admitted.

(Whereupon, the document was received in evi- 200
dence as Petitioner's Exhibit 9.)

By Mr. Kramer:

Q. During the period 1936 to 1940, were you familiar with the sales policy of the company with respect to bulk products? A. Yes, I was the manager of bulk sales.

Q. And what was that policy? A. Our policy was to sell for shipment within 30 days; the orders would cover a price but guaranteed against decline on date of arrival. In other words, the buyer was protected as far as the price was concerned but if there was a decline before the goods arrived, he would get the benefit of it. 201

Q. Did you bring with you a form, a standard form of contract used during that period? A. Yes, I did. Here it is.

Mr. Kramer: I would like to offer in evidence, as Petitioner's Exhibit 10, a photostatic copy of such standard contract.

Mr. Mandry: No objection.

The Court: It is admitted.

(Whereupon, the document was received in evidence as Petitioner's Exhibit 10.)

202 By Mr. Kramer:

Q. A moment ago, Mr. Mueller, you referred to a guarantee against price decline between the date of the contract and the date of delivery. Are you referring specifically to the next to the last paragraph in the previous exhibit? A. Correct.

Q. Now, were there any exceptions to this general policy of not committing the company to sell beyond 30 days? A. Yes, we had two instances.

Q. And what were those instances? A. I have a wire here which we sent out to our trade on January 15. May
203 I read it?

Q. Will you read it? What year was that? A. January 15, 1940. "Until close of business January 20 will accept orders for cerelose, figures at today's market price, for shipment to June 30. Price guaranteed against our decline to date of arrival. Shipments to be made in as nearly equal monthly quantities as possible and must not exceed 25 percent of the total amount of contract in any one calendar month. Any unspecified portion for any calendar monthly installment will be automatically canceled. All business subject to confirmation from this
204 office."

Q. And following that program, following that telegram, did you receive a substantial amount of orders? A. Yes, we booked quite a bit of orders.

Q. Did you permit the buyers to cancel any portion not taken in any given months, in accordance with the provisions? A. Yes. There were cancelations.

Q. Would you care to indicate on chart known as Exhibit 7-G, what happened when that telegram was sent out? A. There were considerable bookings between January 15 and 20.

Mr. Kramer: May I read from Exhibit 7-G? It indicates that during this period, from January 15

to the end of the month, your sales rose from 2 million bushels to almost 8 million bushels. 205

A. The sales on cerelose at that particular time ran up to about 2 million bags.

Q. Now, you mentioned that there was another exception. A. Yes, that was with the canning trade out on the Pacific Coast.

Q. What was your arrangement with the canning trade on the Pacific Coast? A. In 1939—may I read this contract? I think it will give all the facts.

Q. Read whatever clause you think is necessary. A. "Deliveries required to September 30, 1939, balance unshipped on September 30, 1939, will be canceled. The goods covered by this contract are to be used exclusively in your own plant or those under your control for canning or preserving purposes. If our regular market price and your market price is lower than price herein specified on date of arrival, buyer will be entitled to such low price. Goods covered by this confirmation are merchandise under letters patent and sold for consumption in the United States of America only." 206

Q. In other words, as far as the canning industry was concerned, you gave them an option to require delivery up to a certain amount and if they didn't call on you for delivery, that amount was canceled, the amount unordered out was canceled? A. That is correct. In fact, in 1939 we booked 281,908 bags. The cancelations amounted to 11.1 percent. 207

Q. What happened in 1940? A. In 1940 we booked 392,820 bags. The cancelations were 62.1 percent.

Q. 62 percent of these so-called orders were actually canceled? A. That is right.

Q. Do you recall offhand what the percentage of cerelose sales to total sales of the company were in 1940? A. 1940, 15 percent; 15.93 percent.

208 Q. Was the general policy then of the company at all times to take the risk of a decline in price from the date of contract to the date of delivery? A. It was always our policy, yes.

Mr. Kramer: That is all.

Cross Examination

By Mr. Mandry:

Q. Mr. Mueller, you being familiar with the sales poli-
209 cies, was your company buying futures and closing them out on speculation? A. I know nothing about the corn buying. All our work was in connection with sales.

Q. All you know is to the sales? Now then, why did you make a statement right at the end of direct examination that it was the general policy of the company to take the risk in declined prices? A. That is right.

The Court: He means on manufactured products.

The Witness: On the product we sold.

Q. On the product you sold. You being with the com-
210 pany 42 years, you were well aware that they were buying futures contracts during all of that period, say 1934 to 1940 inclusive? A. I was not aware of it.

Q. You never had any idea what the company was buying in futures? A. I had no idea what they were doing in the corn market.

Q. Do you know whether they were buying corn futures? A. No, I did not know they were buying corn futures.

Q. Then, if you didn't know that, then you didn't know whether the company was assuming the risk of declining prices or not, did you? A. Yes, sure, we were assuming the risk.

The Court: Aren't you arguing with him about something that you can argue with me, Mr. Mandry? He is only talking about the manufactured products. 211

Now, if you think that because of the futures they weren't assuming the risk, apparently, you are not going to get anything out of that witness that is beneficial. You can argue that to me regardless of what he says.

Mr. Mandry: I want to get his lack of knowledge to reflect upon his opinion that they were not assuming the risk.

The Court: I don't think it is a question of his opinion. He is talking about the manufactured products and how they dealt with his products. He is telling the absolute truth. 212

Mr. Mandry: I agree with you, your Honor.

The Court: And there is no doubt about it, he is telling the absolute truth.

Mr. Mandry: That is all.

(Witness excused)

Mr. Kramer: Mr. Hall, please.

213

Whereupon,

FRANK H. HALL

was called as a witness on behalf of the petitioner, and having been first duly sworn, testified as follows:

The Clerk: State your name and address for the record, please.

The Witness: Frank H. Hall, 256 Lydecker, Englewood, New Jersey.

214 DIRECT EXAMINATION

By Mr. McCain:

Q. Mr. Hall, what is your profession, sir? A. Member of the Bar.

Q. What was the date of your admission to the Bar? A. 1895, in New Jersey.

Q. And you have been the general counsel, vice president of Corn Products Refining Co. for how long? A. Well, I was in the firm of Steele, Otis & Hall, counsel for the Corn Products Refining Co. at the time of its organization in 1906. About 1920 I personally became the general counsel for the company. My recollection is I became a director in 1915 and vice president somewhere around 1938 or 1939. I don't remember.

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Q. Now, sir, I just wanted at this time to clear up some questions that Mr. Mandry had about this Commodity Exchange proceeding and I have the benefit of your recollection. I understand you have been over the file on this matter and could you tell us just in a couple of minutes what really happened and what the end of it was at this dispute with the Commodity Exchange authority. A. What I have seen in the file, in an effort to refresh my recollection of what took place around 1940, which I believe was primarily concerned with the futures transactions of grain, the last part of 1939. We were then charged, a formal complaint by the Commodity Exchange Commission with being long in excess of two million, having over two million bushels of corn, not required, as I remember, for spreading or hedging purposes. It is my recollection at that time, the meat of that complaint was that we were speculating in grain in excess of the amounts permitted under the statute and the matter proceeded to hearing.

216

Testimony was taken and subsequently the complaint was withdrawn; the action dismissed with no order against us. That is my recollection.

Q. I believe, your Honor, that is the sum and substance of what happened on this Commodity Exchange proceeding. However, I would like to ask Mr. Hall if he has refreshed his recollection sufficiently, and if not we will do so, just what the position of the company was in reply to the CEA complaint that we were speculating. A. Why, we, to the best of our ability, endeavored to prove that we actually saw a need for the quantity of corn we had in order to cover what we expected to market over a period of, my recollection, fifteen or eighteen months. 217

The Court: In other words, instead of having two million bushel in excess of your needs, you proved to them that you didn't have over two million? 218

The Witness: We didn't have any in excess of our needs. Whatever we had was what we needed for the scope of our business.

Q. Well, Mr. Hall, to refresh your recollection, there is a memorandum that Mr. Praeger prepared for you, summarizing the figures involved in these reports and just how we had computed the product commitments against which the futures were required.

Now, the first column in that report prepared for you shows "sales as reported by Quigley." A. This seems to be sales exclusively. 219

Q. Do you recall what that figure comprised? I think it was a normal order position but I would like to get your recollection of it. A. Well, I do not recall what is meant by the column "sales as reported by Quigley."

Q. Mr. Praeger— A. Huron and Keever are our estimate of the bushels of corn required to fill those contracts.

Q. Yes. Now, about those contracts, I wanted to ask you a few questions, if I may. To refresh your recollec-

220 tion, here is the original contract dated the 21st of April, 1927 between the Corn Products Refining Co. and Huron Milling Co. A. Yes.

Q. That contract, that is the corn required to produce the products to be delivered on this contract, were included in your commitments to sell products, were they not, in the reports? A. Yes. They were the estimated quantity of corn, both the Keever and Huron contracts were included in the demonstration of what our position was as to our needs.

Q. In looking at your position ahead under this contract, could you tell, say the first of January, what price
221 you were going to get from the Huron Milling Co. on the first of March? A. No.

Q. And why is that, sir? A. The contracts were all dependent upon so many factors. There was a basic price calculated on certain price of corn and the price for the actual products produced varied according to the various items.

Q. Will you just mention those. A. Well, price, for example, Price would be calculated on estimated base price of $1.80 per [illegible] pounds of thick boiling starch. That price was to be increased, that is, the base price was to
222 be increased at the rate of three cents a hundred pounds for each one-cent increase in cost of corn per bushel of corn and decreased at the same rate. It was to increase at the rate of two cents per 100 pounds for each decrease per ton in our price of feed and similarly adjusted for the price set from oil. It was also adjusted for the price of coal pay.

It was also adjusted by the hourly rate of labor at the plant. It was all these adjustments taken in before you got at the price to be charged for the finished product and that related to each month's manufacture.

Q. Now, I show you a contract dated the 12th of July, 1932, between the Corn Products and Keever Starch Co.

and ask you if you recall that contract and if the terms 223
were quite similar to the terms you described. A. The terms were, I think. The base price was slightly different, but the other factors were all the same as in the Huron contract. I mean the adjustment of what we were to charge them on top of the base price for thick boiling starch were practically identical in the two contracts. Adjustments were calculated in the same method. Your actual price, under each of those contracts, was never known until the close of the month in which the manufacturing process took place.

Mr. Kramer: With the Court's permission and 224
Mr. Mandry's consent, I would like to offer in evidence a copy of one of those contracts. He has testified that both are the same, and I don't want to clutter the record any more than necessary.

Mr. Mandry: No objection.

The Court: It is admitted.

(Whereupon the document was received in evidence as Petitioner's Exhibit 11.)

Q. Just one further question on these contracts, Mr. Hall. Would you characterize these contracts as essentially milling contracts? A. The Huron and Keever con- 225
tracts?

Q. Yes. A. Yes.

Q. They were not sales contracts? A. I wouldn't call them sales contracts at all. I think, as a matter of fact, the practice of the company—I am quite sure the charges for goods delivered under these contracts were invoiced entirely separately from those invoiced for general sales. They were treated as separate milling contracts and did not come under the jurisdiction of the general sales department.

Mr. McCain: Mr. Mandry's witness.

226 CROSS EXAMINATION

By Mr. Mandry:

Q. Mr. Hall, I am not at all clear from your explanation of what happened in the Commodity Exchange in 1940. They complained that your long position in corn was more than two million bushels, was that it?

The Court: More than two million over their demand, wasn't that it?

Mr. Kramer: Over our needs.

227 A. My recollection is the statute applied only in the event you had two million in excess of your needs and they charged us of having at a particular time more than the two million and not needed for spreading or hedging.

Q. When you speak of your needs, what needs, for what period, for how long a period? For instance, over a year you use 35 to 36 million bushels. A. I don't think the statute provided any time. The complaint against us was aimed on speculating. Whatever the speculation feature was in the market, I do not know. We demonstrated, apparently, that we needed the corn we had.

228 Q. Didn't you also have a question involved there as to your unfilled offers, the Keever orders and the Huron orders? A. That was one feature of our demonstration in this hearing as to the need for the corn.

Q. As to the need for the corn, why you had corn futures? A. We showed them what our sales commitments were, which included commitments under the Huron and Keever contracts and other things that Mr. Mueller and others have testified here to, but which we call sales commitments.

Mr. Mandry: That is all, Mr. Hall.

The Court: Is that all?

Witness excused. 229

We will recess now for lunch. We will reconvene at two o'clock.

(A recess was taken until two o'clock p. m.)

AFTERNOON SESSION

The Court: Let us proceed.

Whereupon,

230

HOLLY L. CALLENDER

was called as a witness on behalf of the Petitioner, and having been first duly sworn, testified as follows:

The Clerk: State your name and address for the record.

The Witness: Holly L. Callender, Plainfield, New Jersey.

DIRECT EXAMINATION

231

By Mr. Kramer:

Q. Mr. Callender, what is your present employment? A. I am Treasurer of the Corn Products Refining Co.

Q. How long have you been with that company? A. I have thirty-five years of service next December.

Q. Did you bring with you a photostatic copy of the 1940 tax returns? A. Yes, here it is.

Mr. Kramer: With Mr. Mandry's permission, I would like to offer this return in evidence as a joint exhibit.

232 Mr. Maudry: Perfectly all right.

Mr. Kramer: Joint Exhibit 12-H.

The Court: It is admitted.

(Whereupon the document was received in evidence as Joint Exhibit 12-H.)

Q. Are you familiar with the books and records of the company as kept in 1940? A. Yes.

Q. Will you describe to the Court the manner in which the corn futures contracts, purchases, and sales were reflected on the books of the company. A. I suppose I ought
233 to start from the beginning.

Q. Will you do that. A. Our Director of Purchases, or his assistant, would make a trade, would make a corn futures purchase through a broker. When that trade was executed, we in the accounting department would receive a confirmation of the purchase.

Q. From whom? A. From the broker, Parker & Graff, in New York City. On receipt of that confirmation of purchase, we would send it to Mr. Campbell or Mr. Praeger, who would approve that we had purchased a certain future of a certain quantity at a certain price.

234 At that time the broker would probably call on us for margin, which we would have to post.

Q. May I interrupt you there. All of these corn futures contracts were purchased on margin, is that correct? A. Yes, sir.

Q. Will you continue. A. We would post the margin with the broker and at that time we would charge the broker's account on the accounts receivable ledger. It would remain on our accounts receivable ledger until such time as the trade was closed, at which time we would recover whatever portion was left of the margin.

Q. Will you describe the bookkeeping entries which were made when a corn futures contract was closed out by

accepting delivery of grain. Will you explain how the accounts were handled. A. Yes. We would get from Parker & Graff a confirmation showing that the future contract was closed out at a certain price and at the same time we would be paying for the corn being delivered to us at the price at which the future was closed, some allowance being made for the type of corn that was delivered. There might be a discount allowed. 235

Q. May I interrupt you there. Under the contract, several grades of corn could be delivered, is that correct? A. That is right.

Q. With a price differential against the standard grade? A. Against No. 2 corn. 236

Q. You brought with you a sample "T" contract, did you not? A. Yes.

Q. Have you made copies of those? A. Yes.

Q. Now, referring to the "T" account which you brought with you, will you trace through those schedules how an account was closed out when delivery was taken of the corn. A. We might take delivery at the plant or we might take delivery at a public elevator. I will describe taking delivery at the plant first.

As I said before, when we made the purchase, we posted a margin and at that time we drew a check and that check was charged against the broker on our accounts receivable ledger. Now, when that purchase was delivered, we received from the broker a confirmation showing that it was being closed out at a certain price, and following that we received what was known as an account purchase and sales on which the broker would indicate on the left the futures that had been purchased, the quantity, the price, and the extension, and on the right he would show the futures that had been, or the corn that had been delivered against that contract, the quantity, the price, and the extension and he would arrive at a profit or loss. If there was a profit, we would credit corn miscellaneous and we would 237

238 charge the broker's account so that at that time he would be charged with the margin plus the profit, and if that completed the transaction we would have then received from the broker a check for the margin and the profit that we had made.

Q. Now, if you had a loss, how would you handle it? A. We would get a similar account purchase and sales from the broker and he would show that he was debiting our account on his books with a certain amount. We would in turn, after checking his calculations, we would in turn credit his account and debit corn miscellaneous.

239 Q. How did you handle the corn upon which you took delivery, the corn itself? A. The corn itself, of course, we had to pay for and when we paid for it, the price depending on the corn delivered, it was charged into an account in our books known as "Transit Corn" and it was kept in that account and became part of our inventory of corn at that time.

Q. Turning to the situation where instead of taking delivery of the corn you sold the futures contract. Will you describe the accounting procedure with reference to such a transaction. A. We would get from the broker a confirmation of the sale of a certain quantity at a certain

240 price. Following that we would get his account purchase and sales in which he would show on one side what we had purchased, and at what price, and the extension, and on the other side what we had sold and at what price and the extension, and they would arrive at a profit and loss. If it was a profit, we would debit his account and credit corn miscellaneous; if it was a loss, we would credit his account and credit corn miscellaneous.

Q. And at the end of your accounting period, how would the account called "Corn Miscellaneous" be handled? A. The account "Corn Miscellaneous" was closed out along with corn, the cost of corn ground against our cost of goods sold.

Q. One further question. Where no delivery of corn was taken under one of these corn futures contracts— A. You mean we had sold a future? 241

Q. Where you had sold a futures, was the inventory account in any way affected? A. No, it was not. We made no entry when we made a purchase of corn; no entry affecting any accounts on our books.

The Court: You didn't do that until you took delivery?

The Witness: At that time it did go into it.

Q. When the account was still open, it was an account with the broker? A. That is right, on which we had posted margin. And that was the only entry we had made. 242

Q. At the end of the year, in the case of contracts where you did not take delivery, it was closed out to "Corn Miscellaneous" and then finally into cost of goods sold? A. That is right.

Mr. Kramer: No further questions.

Cross Examination.

By Mr. Mandry: 243

Q. Mr. Callender, I believe you noticed on Exhibit 12-H, which is photostatic copy of the return for 1940, there is an opening and closing inventory, is there not? A. Yes, sir.

Q. Does that opening and closing inventory embrace your raw corn as well as by-products or processed products on hand at that time? A. Yes.

Q. And did you keep the inventory of cost or market, whichever is lower? A. We kept our corn and produce inventory at cost.

Q. With respect to your transactions with your broker,

244 when you closed out a future, he kept an account on his books with respect to what he owes you or what you owed him, did he not? A. Yes, sir.

Q. And when an account was closed out, if a gain, he gave you a check for the gain? A. He gave us either a credit or a check.

Q. If you wanted to liquidate the account you could have gotten the cash? A. Yes, sir.

Q. And to the contrary, if it was a loss, you would have to pay him? A. That is right.

Mr. Mandry: That is all, Mr. Callender.

245 Mr. Kramer: No further questions.

The Court: The witness is excused.

(Witness excused.)

Whereupon,

ROY PARKER

was called as a witness on behalf of the Petitioner, and having been first duly sworn, testified as follows:

246 The Clerk: State your name and address for the record.

The Witness: Roy Parker, 211 North 19th Street, East Orange, New Jersey.

DIRECT EXAMINATION

By Mr. Kramer:

Q. What is your present employment, Mr. Parker? A. Corn Products Refinery.

Q. What is your present capacity there? A. Manager in the Feed Division.

Q. During the years 1936 to 1940, what was your em- 247
ployment? A. In the Feed Division, under another manager.

Q. Of Corn Products? A. Of Corn Products.

Q. Are you familiar with the sales policy of the company with respect to feed? A. I am.

Q. What do you classify as feed? A. By-products from the manufacture of the main products of corn.

Q. You are familiar with the contents of Exhibit 9? A. That is the one you showed me, yes.

Q. With respect to the comparative dollar value? A. That is right.

Q. When you used the term "by-products," what did you 248
mean? A. Feed, meal.

Q. During the 1936 to 1940 period, what was the sales policy with respect to feed? Could you get enough feed during that period to satisfy your customers? A. At times we could and at other times we couldn't, depending on the time of the year.

Q. As far as you know, was the policy of the company to purchase corn for grinding merely to supply feed to customers? A. Never in the 38 years I have been there. I wish they would at times.

Q. In other words, what you are saying is if you had 249
feed as a result of the other processes of the company as a by-product, you would sell it? A. Absolutely.

Q. Under what terms did you sell feed to customers as a general policy? A. As general policy, we sell for a calendar month.

Q. During the 1936 to 1940 period did that change at all? A. Not that I recall, no.

Q. Did you on occasion make certain forward commitments? A. To some customers we did.

Q. And when you made those commitments, what was the situation as far as the price factor was concerned?

250 A. The price is the same for a calendar month. There isn't any price factor in the forward selling.

Q. Was there any guarantee made in the price declarations? A. The same as for the calendar month, whatever that price decline happened to be.

Q. I show you a contract, or a writing, dated May 17, 1939, and ask you if you can identify it. A. I do, definitely.

Q. What is that, sir? A. That was an assurance to that particular customer that if we had that much product available we would sell him that much on a calendar month basis.

251 Q. You say if you had that much by-product available you would sell it to him at the price? A. Yes.

Q. And what was the agreement as to price? A. Whatever is the first named price for the calendar month; just the same as we would sell anyone else.

Q. What would happen if the price declined? A. If there was a guarantee, he would get the benefit of it.

Mr. Kramer: I have no further questions.

Cross Examination

252 By Mr. Mandry:

Q. Mr. Parker, did you testify that you only sold feed products when you had it on hand? A. We sell ahead on the calendar month, anticipate what we are going to have and sell on that basis.

Q. But you sold in excess of what you had at the time you made the order, frequently, did you not? A. I don't quite understand.

Q. Didn't you have unfilled orders for feed in excess of the amount of stock on hand? A. Stock on hand in plant production for the calendar month is our policy, not to overdo it, because if we sold more the customer wouldn't

get it. That isn't good selling policy when you are working with a by-product. You can't hit it exactly. You try to, yes. 253

Q. Are you familiar with Exhibit 6-F, an analysis of the feed situation from July 4, 1938 to December 30, 1940? Are you familiar with that exhibit? A. I don't know as I am or not.

Q. This exhibit runs by weeks for a period of about three years and I don't want to carry you throughout all of that, but let us look for an instance in June 8, 1940. Does that show unfilled orders in excess of your stock on hand? A. The calendar month sale is the stock on hand plus the anticipated production for that month. 254

Q. But at the end of that week you had 17,000 tons on hand and you had unfilled orders for 27,000 tons, did you not? A. The end of that week?

Q. The end of that week. A. That apparently covered the calendar month sales.

Q. No, it covers only one week. A. We weren't selling on a weekly basis.

Q. I am speaking—this exhibit shows at the end of each week. So you did have unfilled orders in excess of stock on hand at various times, did you not? A. We always have excess orders. 255

Q. Excess unfilled orders? A. Excess of stock on hand because our sale is made for the calendar months which anticipates production.

Q. And in order to have the feed products you sold, you had to buy raw corn, did you not? A. I had nothing to do with the buying of corn.

Q. But the feed products is made out of corn, is it not? A. Definitely.

Mr. Mandry: That is all.

256 RE-DIRECT EXAMINATION

By Mr. Kramer:

Q. During May of 1939, you made an agreement, did you not, with the Eastern Milling Co.? A. Eastern States Milling Co.

Q. For forward sale of feed? A. Yes.

Q. Is this a copy of that original contract? A. I would say so, signed by Mr. Kayhart.

Mr. Kramer: I would like to offer in evidence a copy of that contract, with the permission of the
257 Government's counsel.

Mr. Mandry: No objection.

The Court: It is admitted.

(Whereupon the document was received in evidence as Petitioner's Exhibit 13.)

Q. Now, this was the contract where you committed yourself, as I understand it, to deliver feed beyond a 30-day period? A. That is right.

Q. What was the situation as far as price was concerned? A. It was sold at the same price as calendar month.

258 Q. And the price guarantee? A. Whatever that guarantee was that prevailed at the time would apply on that, too.

Mr. Kramer: The contract speaks for itself. I won't question the witness any further on that.

Mr. Mandry: No further questions.

Mr. Kramer: One further question.

By Mr. Kramer:

Q. Was it only in May of 1939 that you did this, or was that general with respect to that forward commitment? A. That was not a general practice and it wasn't done for everyone, just a few.

Mr. Kramer: That is all, Mr. Parker. 259

Mr. Mandry: Mr. Parker, just a word.

RE-CROSS EXAMINATION

By Mr. Mandry:

Q. You said it was not the general practice. Now, this contract, Exhibit 13, is with the Eastern States Milling Co.? A. That is right.

Q. Did you have somewhat similar contracts with the Keever Starch Co. and the Huron Milling Co.? A. Never sold feed to the Keever Starch Company or the Huron Milling Co. that I know of. 260

Q. You didn't handle that business?. A. We never sold any feed, as far as I can remember, to either company.

Mr. Mandry: That is all.

Mr. Kramer: They weren't in the feed business, were they?

The Witness: Not in the feed business, as far as I can recall. Never sold them.

Mr. Kramer: That is all.

The Court: The witness is excused.

(Witness excused.)

261

Whereupon,

W. E. HENRY

was called as a witness on behalf of the Petitioner, and having been first duly sworn, testified as follows:

The Clerk: State your name and address for the record.

The Witness: W. E. Henry, River Forest, Illinois.

262 DIRECT EXAMINATION

By Mr. Kramer:

Q. Mr. Henry, will you endeavor to speak slowly and keep your voice up so that Mr. Mandry and I can hear you?

What is your present employment? A. Manager of the Grain Department of Corn Products Refining Co.

Q. When you say Manager of the Grain Department, what are your functions? A. Buy grain at the lowest price possible and keep the plant supplied.

Q. Are you a member of the Chicago Board of Trade?

263 A. I am.

Q. How long have you been a member of that organization? A. Since 1943.

Q. Prior to that what was your experience? A. Experience or membership?

Q. What was your business prior to 1943? A. In the milling business, flour milling business.

Q. How long have you been in the flour milling business prior to 1943? A. Twenty-four years.

Q. Did you ever work for any governmental agencies? A. From 1941 to 1943 with the Commodity Credit Corporation.

264 Q. What were your functions there? A. Grain specialist.

Q. Are you familiar with the rules and regulations of the Chicago Board of Trade? A. I am.

Q. Did you bring with you a copy of the regulations and by-laws at my request? A. I have.

Q. Are you familiar with the steps taken in trading in corn futures on the Chicago Board of Trade? A. I am.

Q. Does the Corn Products Refining Co. today buy all of its corn futures contracts, if any, on the Chicago Board of Trade? A. Generally speaking, yes.

Q. And during the period 1940, to the best of your recol-

lection, did it buy all of its contracts? A. I just came 265
with the company in 1944. Prior to that I wouldn't know.

Q. I understand. Now, will you describe how a corn futures contract is acquired on the Chicago Board of Trade. A. We would give a broker an order to buy so many bushels at such and such a price.

Q. When you speak in terms of a contract, I believe a previous witness has testified that a contract consists of 5,000 bushels as a unit. A. That is the unit.

Q. Did you bring with you a form of such an order to a broker? A. No, not an order; a confirmation of trade. The order would be verbal.

Q. The order would be verbal but the confirmation 266
would be in writing? A. That is right.

Q. May I have two of those. (Witness hands paper to Mr. Kramer.) To your knowledge, has this form been in effect for some years? A. It has.

Q. Was it in effect in 1940, as far as you know? A. As far as I know, yes.

Mr. Kramer: With respondent's permission, I would like to offer in evidence a copy of the purchase.

Mr. Mandry: No objection.

The Court: It is admitted. 267

(Whereupon the document was received in evidence as Petitioner's Exhibit 14.)

Mr. Kramer: I would like to read just briefly one clause in that exhibit, if I may.

The Court: What for?

Mr. Kramer: If your Honor will bear with me, it is for the purpose of proving——

The Court: Do you want to read it for my benefit or his, because I can read it myself.

Mr. Kramer: My purpose was to show that one

268 contract is the same as any other on the Exchange with reference to Section 118, especially.

Q. Now, have you also brought with you a form when a corn futures contract is sold? A. Right here.

Q. That is the confirmation of the sale? A. Yes, so marked.

Q. Do you have two copies of that? A. Yes (handing documents).

Mr. Kramer: I would like to offer in evidence, with respondent's permission, a copy of the confirmation of sale.

269 The Court: It is admitted.

(Whereupon the document was received in evidence as Petitioner's Exhibit 15.)

Q. Is there any difference, as far as you know, between one corn futures contracts and any other corn futures contract except as to date of maturity? A. No.

Q. They are all identical? A. Yes.

Q. Do you know who the original seller of the corn futures contract is at any given point? A. No.

Q. You don't know who the ultimate purchaser is at any given time, do you? A. We would be the purchaser.

270 Q. I mean, if you sold it, you would sell it through a broker? A. That is right. We would have no concern with it.

Q. Will you describe how you go about taking delivery under a corn futures contract. A. If we were long in futures and elected to take delivery, we would be notified through the Clearing House; the Clearing House would notify our commission merchant that such-and-such an amount of bushels was being delivered to them for our account and we would pay for it.

Q. Where would delivery ordinarily take place under the rules of the Exchange? A. In a regular warehouse.

Q. And that would be in what area? A. In the Chicago switching limits. 271

The Court: Each one of these quantities is for delivery for a specific quantity at a certain date?

The Witness: At the expiration of the futures.

The Court: And that is a certain date, so when that date comes around you either have to dispose of the contract before that date or else take delivery on that date?

The Witness: That is right.

Q. As far as you know, is such a contract fully negotiable or transferable? A. It is. 272

Q. Did the Chicago Board of Trade maintain a regular market for the disposal or the purchase of such contracts? A. That is right.

Q. Are you familiar with the term "hedging" as previously described in the opening statement? A. A hedge is a balanced position.

Q. When you say "A hedge is a balanced position," can it take one of several forms? A. It can, but you must have specific price on both ends, an irrevocable contract.

Q. It must be an irrevocable contract with a specific price, you say? A. That is right.

Q. Would you say a short sale against inventory was a hedge? A. Well, it could be. 273

Q. And a long futures position against definite future forward commitments? A. At a price?

Q. At a price. A. Yes.

Q. But lacking a price, would it be a hedge, in your opinion? A. It would not.

Q. You said, in response to an earlier question, that a hedge was a balanced position. A. Yes.

Q. I would like you to look at Exhibit 7-G in evidence and see whether you can determine at any given point

274 where the petitioner was maintaining a hedged position. A. It doesn't look like it from this graph.

Q. Will you look at all years. A. Here sales went up and purchases went down. I would say no.

Mr. Kramer: No further questions.

CROSS EXAMINATION

By Mr. Mandry:

Q. Mr. Henry, I am not at all clear on your explanation of closing out of futures purchase contracts where you do not accept delivery. Now, you have stated in the first
275 instance that you give to your broker a verbal order to purchase such-and-such a quantity at such a price for delivery in a certain contract month and he sends you a confirmation of that, and that confirmation says it contemplates the actual receipt and delivery of the property. A. That is right.

Q. When it comes up to some period shortly before the maturity date of the futures, what do you actually do when you are not going to accept delivery? Do you telephone the broker? A. Or see him in person and tell him to sell so much at such-and-such a price or sell so much to the market.

276 Q. If you had a futures contract for 10,000 bushels for May, you would tell him to sell for you 10,000 bushels for May delivery, would you not? A. That is right.

Q. And he would send you a confirmation when you put in an order for sale? A. That is right, the execution of the order.

Q. You have stated certain definitions of hedges. Where did you get those definitions from? A. I have been in this business since 1920 and I had to live with it during that period and that has been my experience.

Q. Was that experience coming out from being a member of the Chicago Board of Trade for their purposes out

there? A. That, and I was a member of the St. Louis Merchants Exchange since 1918. 277

Q. And that would be the experience from which you have drawn your definition of a hedge? A. That is correct.

Q. I believe you stated—what was that statement of a hedge, that you have something with a definite price? A. Yes.

Q. What was that statement again? A. If you have a definite purchase price and a definite sale price, you have something that is balanced. Therefore, it could be a hedge.

Q. What would you think of this definition, and I will read it to you: "A hedge transaction on Commodity Exchange, Inc. is defined as a purchase or sale of future contracts subject to the by-laws and rules of the Exchange, executed for the purpose of minimizing a price risk or facilitating a customary or normal conduct of business." 278

What would you think of that definition? A. I would say that is probably pertaining to an elevator man who was accumulating grain and selling a future against it to minimize his risk.

Q. That is one of the definitions of a hedge by the Commodity Exchange of New York. A. Yes. 279

Q. Do you agree with what I read? A. He would buy corn at a specific price and he would sell futures at a specific price and they would both move simultaneously, presumably.

Q. Do you agree with the portion I just read? A. Yes, I say essentially that is correct.

Mr. Mandry: That is all.

280 RE-DIRECT EXAMINATION

By Mr. Kramer:

Q. The Chicago Board of Trade, I understand, also lists certain stocks and bonds, is that correct? A. That is right.

Q. You have a post on that? A. Yes.

Q. Is there any essential difference, as far as you know, between trading in securities on margin and trading in corn futures on margin? A. No, they are all negotiable.

281 Mr. Kramer: That is all.

Mr. Mandry: No questions.

The Court: The witness is excused.

(Witness excused.)

Mr. Kramer: I believe that is the Petitioner's case.

Mr. Mandry: Respondent rests.

The Court: The case stands submitted. On the matter of filing briefs, I suppose you can file simultaneous briefs.

Mr. Kramer: I would be happy to do so.

The Court: Time for filing briefs will be sixty

282 and thirty.

The Clerk: August 14, 1950 for main briefs and September 13 for reply briefs.

The Court: I would like to compliment counsel on their expeditious handling of the case. I am always glad to see a good job well done.

(Whereupon, at 2:50 o'clock p. m., the hearing was concluded.)

Joint Exhibit 6-F.

CORN PRODUCTS REFINING COMPANY
WEEKLY REPORTS, STOCKS AND ORDERS
(In Bushels)

	7/1/38		7/10/38		7/17/38		7/24/38		8/1/38		8/7/38	
	Stock	Orders	Stock	Orders	Stock	Orders	Stock	Orders	Stock	Orders	Stock	Orders
Cerelose	610,000	210,000	515,000	210,000	530,000	175,000	555,000	160,000	565,000	160,000	600,000	155,000
Bulk	1,435,000	710,000	1,350,000	710,000	1,260,000	1,150,000	1,375,000	1,145,000	1,450,000	1,150,000	1,480,000	975,000
Package	520,000	65,000	500,000	65,000	520,000	60,000	540,000	55,000	555,000	75,000	550,000	65,000
Total	2,565,000	985,000	2,365,000	985,000	2,410,000	1,385,000	2,470,000	1,360,000	2,570,000	1,385,000	2,630,000	1,195,000
	8/14/38		8/21/38		8/28/38		9/1/38		9/11/38		9/18/38	
Cerelose	595,000	145,000	610,000	135,000	550,000	130,000	590,000	135,000	565,000	1,355,000	570,000	1,535,000
Bulk	1,500,000	820,000	1,570,000	710,000	1,590,000	635,000	1,650,000	660,000	1,655,000	580,000	1,770,000	580,000
Package	575,000	75,000	625,000	65,000	630,000	75,000	650,000	95,000	620,000	115,000	595,000	105,000
Total	2,670,000	1,040,000	2,805,000	910,000	2,770,000	840,000	2,890,000	890,000	2,840,000	2,050,000	2,935,000	2,220,000
	9/25/38		10/1/38		10/9/38		10/16/38		10/23/38		11/1/38	
Cerelose	585,000	1,355,000	580,000	1,335,000	550,000	1,110,000	535,000	1,100,000	510,000	1,380,000	500,000	760,000
Bulk	1,720,000	1,140,000	1,700,000	2,190,000	1,685,000	1,700,000	1,720,000	1,360,000	1,700,000	980,000	1,650,000	820,000
Package	540,000	100,000	540,000	110,000	525,000	100,000	550,000	80,000	570,000	85,000	600,000	70,000
Total	2,845,000	2,595,000	2,820,000	3,635,000	2,760,000	2,910,000	2,805,000	2,540,000	2,780,000	2,445,000	2,750,000	1,650,000
	11/6/38		11/13/38		11/20/38		11/27/38		12/1/38		12/11/38	
Cerelose	480,000	465,000	525,000	235,000	665,000	115,000	780,000	150,000	815,000	180,000	1,050,000	235,000
Bulk	1,670,000	800,000	1,650,000	640,000	1,525,000	960,000	1,480,000	1,835,000	1,430,000	1,830,000	1,480,000	1,350,000
Package	625,000	60,000	650,000	55,000	670,000	60,000	715,000	75,000	710,000	80,000	720,000	450,000
Total	2,775,000	1,325,000	2,825,000	930,000	2,860,000	1,135,000	2,975,000	2,060,000	2,955,000	2,090,000	3,250,000	1,630,000
	12/18/38		12/23/38		1/1/39		1/8/39		1/15/39		1/22/39	
Cerelose	1,195,000	1,135,000	1,330,000	1,080,000	1,375,000	960,000	1,360,000	805,000	1,425,000	595,000	1,430,000	455,000
Bulk	1,470,000	1,485,000	1,559,000	2,000,000	1,500,000	1,779,000	1,500,000	1,500,000	1,475,000	1,210,000	1,480,000	900,000
Package	780,000	100,000	820,000	115,000	780,000	220,000	705,000	215,000	670,000	250,000	620,000	300,000
Total	3,445,000	2,720,000	3,700,000	3,195,000	3,655,000	2,950,000	3,565,000	2,520,000	3,570,000	2,055,000	3,530,000	1,655,000
	2/1/39		2/12/39		2/19/39		3/1/39		3/5/39		3/12/39	
Cerelose	1,465,000	375,000	1,540,000	150,000	1,630,000	160,000	1,610,000	145,000	1,625,000	245,000	1,585,000	1,280,000
Bulk	1,455,000	775,000	1,640,000	695,000	1,700,000	620,000	1,675,000	800,000	1,675,000	1,035,000	1,690,000	1,130,000
Package	610,000	405,000	630,000	350,000	620,000	225,000	585,000	185,000	585,000	155,000	540,000	130,000
Total	3,530,000	1,555,000	3,810,000	1,195,000	3,950,000	1,005,000	3,870,000	1,130,000	3,885,000	1,435,000	3,815,000	2,540,000
	3/19/39		3/26/39		4/1/39		4/9/39		4/16/39		4/23/39	
Cerelose	1,535,000	1,165,000	1,475,000	1,300,000	1,545,000	1,490,000	1,160,000	1,190,000	1,130,000	1,010,000	1,210,000	960,000
Bulk	1,660,000	1,050,000	1,625,000	1,020,000	1,600,000	990,000	1,565,000	980,000	1,535,000	900,000	1,525,000	1,100,000
Package	530,000	100,000	520,000	85,000	560,000	70,000	580,000	65,000	605,000	70,000	610,000	70,000
Total	3,725,000	2,315,000	3,620,000	2,405,000	3,505,000	2,550,000	3,305,000	2,235,000	3,270,000	1,980,000	3,345,000	2,130,000
	5/1/39		5/7/39		5/14/39		5/21/39		6/1/39		6/11/39	
Cerelose	1,235,000	760,000	1,275,000	600,000	1,320,000	475,000	1,335,000	320,000	1,240,000	225,000	1,325,000	185,000
Bulk	1,550,000	2,200,000	1,475,000	2,080,000	1,570,000	1,690,000	1,575,000	1,430,000	1,500,000	1,100,000	1,540,000	850,000
Package	600,000	75,000	600,000	75,000	580,000	100,000	610,000	120,000	600,000	105,000	640,000	105,000
Total	3,385,000	3,035,000	3,350,000	2,755,000	3,470,000	2,265,000	3,520,000	1,870,000	3,340,000	1,430,000	3,505,000	1,140,000

Joint Exhibit 6-F,

CORN PRODUCTS REFINING COMPANY

WEEKLY REPORTS, STOCKS AND ORDERS

(In Bushels)

	6/18/39		6/25/39		7/1/39		7/9/39		7/16/39		7/23/39	
	Stock	Orders	Stock	Orders	Stock	Orders	Stock	Orders	Stock	Orders	Stock	Orders
Cerelose	1,320,000	190,000	1,230,000	160,000	1,180,000	175,000	1,180,000	170,000	1,150,000	185,000	1,050,000	270,000
Bulk	1,520,000	765,000	1,530,000	760,000	1,640,000	850,000	1,530,000	740,000	1,470,000	900,000	1,425,000	760,000
Package	610,000	150,000	595,000	275,000	600,000	380,000	600,000	380,000	600,000	360,000	535,000	290,000
Total	3,430,000	1,105,000	3,355,000	1,195,000	3,420,000	1,405,000	3,310,000	1,290,000	3,220,000	1,445,000	3,010,000	1,320,000
	8/1/39		8/8/39		8/13/39		8/20/39		8/27/39		9/1/39	
Cerelose	990,000	245,000	990,000	235,000	975,000	210,000	930,000	175,000	930,000	150,000	910,000	205,000
Bulk	1,375,000	750,000	1,325,000	670,000	1,345,000	575,000	1,395,000	695,000	1,395,000	1,835,000	1,400,000	2,535,000
Package	515,000	175,000	505,000	120,000	535,000	113,000	565,000	65,000	620,000	80,000	650,000	110,000
Total	2,880,000	1,170,000	2,820,000	1,025,000	2,855,000	895,000	2,890,000	935,000	2,945,000	2,065,000	2,960,000	2,850,000
	9/10/39		9/17/39		9/24/39		10/1/39		10/8/39		10/15/39	
Cerelose	760,000	1,025,000	515,000	1,550,000	440,000	1,645,000	360,000	1,565,000	345,000	1,425,000	400,000	1,190,000
Bulk	1,300,000	2,160,000	1,235,000	1,735,000	1,250,000	1,650,000	1,150,000	1,615,000	1,140,000	1,380,000	1,215,000	1,250,000
Package	585,000	235,000	495,000	650,000	385,000	800,000	380,000	830,000	410,000	770,000	435,000	690,000
Total	2,645,000	3,420,000	2,245,000	3,935,000	2,075,000	4,095,000	1,890,000	4,010,000	1,895,000	3,575,000	2,050,000	3,130,000
	10/22/39		11/1/39		11/5/39		11/12/39		11/19/39		11/26/39	
Cerelose	375,000	935,000	435,000	760,000	465,000	550,000	500,000	470,000	620,000	360,000	740,000	300,000
Bulk	1,285,000	1,040,000	1,450,000	980,000	1,465,000	880,000	1,450,000	800,000	1,430,000	500,000	1,450,000	595,000
Package	435,000	575,000	450,000	350,000	470,000	270,000	480,000	175,000	560,000	90,000	550,000	50,000
Total	2,095,000	2,550,000	2,335,000	2,090,000	2,430,000	1,700,000	2,430,000	1,445,000	2,550,000	950,000	2,740,000	945,000
	12/1/39		12/10/39		12/17/39		12/24/39		1/1/40		1/7/40	
Cerelose	810,000	185,000	980,000	220,000	1,105,000	365,000	1,200,000	335,000	1,170,000	375,000	1,245,000	370,000
Bulk	1,495,000	783,000	1,440,000	2,138,000	1,440,000	2,425,000	1,460,000	2,150,000	1,375,000	1,960,000	1,395,000	1,880,000
Package	605,000	50,000	665,000	35,000	730,000	40,000	775,000	60,000	725,000	85,000	725,000	70,000
Total	2,910,000	1,018,000	3,085,000	2,393,000	3,275,000	2,830,000	3,435,000	2,545,000	3,270,000	2,420,000	3,365,000	2,320,000
	1/14/40		1/21/40		1/28/40		2/1/40		2/11/40		2/18/40	
Cerelose	1,235,000	405,000	1,330,000	1,125,000	1,420,000	6,410,000	1,495,000	6,800,000	1,570,000	6,515,000	1,630,000	6,425,000
Bulk	1,350,000	1,590,000	1,390,000	1,610,000	1,410,000	1,050,000	1,415,000	970,000	1,360,000	790,000	1,360,000	625,000
Package	725,000	50,000	715,000	40,000	715,000	60,000	735,000	65,000	760,000	65,000	790,000	65,000
Total	3,310,000	2,045,000	3,435,000	2,775,000	3,545,000	7,520,000	3,645,000	7,835,000	3,690,000	7,370,000	3,780,000	7,115,000
	2/25/40		3/1/40		3/10/40		3/17/40		3/24/40		4/1/40	
Cerelose	1,650,000	6,300,000	1,650,000	6,265,000	1,640,000	6,850,000	1,645,000	5,855,000	1,670,000	5,680,000	1,680,000	5,625,000
Bulk	1,380,000	1,500,000	1,400,000	1,730,000	1,370,000	1,450,000	1,350,000	1,025,000	1,420,000	880,000	1,385,000	1,080,000
Package	800,000	65,000	770,000	60,000	765,000	60,000	760,000	70,000	750,000	70,000	735,000	65,000
Total	3,830,000	7,865,000	3,820,000	8,055,000	3,775,000	8,360,000	3,755,000	6,950,000	3,840,000	6,630,000	3,800,000	6,770,000

Joint Exhibit 6-F.

CORN PRODUCTS REFINING COMPANY
WEEKLY REPORTS, STOCKS AND ORDERS
(In Bushels)

	4/8/40		4/14/40		4/21/40		5/1/40		5/12/40		5/19/40	
	Stock	Orders	Stock	Orders	Stock	Orders	Stock	Orders	Stock	Orders	Stock	Orders
Cerelose	1,750,000	5,360,000	1,820,000	5,170,000	1,815,000	4,650,000	1,810,000	4,300,000	1,860,000	3,945,000	1,835,000	3,820,000
Bulk	1,300,000	1,360,000	1,300,000	1,415,000	1,280,000	1,240,000	1,250,000	1,885,000	1,200,000	1,560,000	1,205,000	1,440,000
Package	720,000	70,000	700,000	65,000	675,000	60,000	640,000	85,000	615,000	175,000	580,000	240,000
Total	3,770,000	6,790,000	3,820,000	6,650,000	3,770,000	5,950,000	3,700,000	6,270,000	3,675,000	5,680,000	3,620,000	4,500,000

	5/26/40		6/1/40		6/9/40		6/16/40		6/23/40		7/1/40	
Cerelose	1,815,000	3,720,000	1,850,000	2,945,000	1,815,000	2,765,000	1,825,000	2,560,000	1,800,000	2,360,000	1,825,000	2,115,000
Bulk	1,180,000	1,620,000	1,280,000	1,710,000	1,350,000	2,040,000	1,395,000	1,880,000	1,475,000	1,590,000	1,475,000	1,400,000
Package	600,000	320,000	610,000	500,000	605,000	500,000	600,000	500,000	630,000	500,000	665,000	500,000
Total	3,595,000	5,660,000	3,740,000	5,155,000	3,770,000	5,305,000	3,820,000	4,940,000	3,905,000	4,450,000	3,965,000	4,015,000

	7/7/40		7/14/40		7/21/40		7/28/40		8/1/40		8/11/40	
Cerelose	1,680,000	1,860,000	1,580,000	2,530,000	1,540,000	2,370,000	1,500,000	2,100,000	1,460,000	1,840,000	1,210,000	1,400,000
Bulk	1,350,000	1,230,000	1,230,000	1,220,000	1,250,000	1,080,000	1,280,000	700,000	1,340,000	1,100,000	1,380,000	1,190,000
Package	660,000	500,000	645,000	500,000	610,000	500,000	590,000	500,000	530,000	500,000	530,000	500,000
Total	3,690,000	3,590,000	3,455,000	4,250,000	3,400,000	3,950,000	3,370,000	3,300,000	3,350,000	3,440,000	3,120,000	3,090,000

	8/18/40		8/25/40		9/1/40		9/8/40		9/15/40		9/22/40	
Cerelose	1,040,000	1,080,000	1,030,000	895,000	1,045,000	855,000	1,050,000	870,000	1,030,000	835,000	1,075,000	760,000
Bulk	1,380,000	1,030,000	1,415,000	930,000	1,400,000	925,000	1,370,000	830,000	1,340,000	910,000	1,335,000	1,130,000
Package	530,000	500,000	545,000	500,000	545,000	500,000	550,000	500,000	560,000	500,000	560,000	500,000
Total	2,950,000	2,610,000	2,980,000	2,325,000	2,990,000	2,280,000	2,970,000	2,200,000	2,930,000	2,245,000	2,970,000	2,390,000

	10/1/40		10/6/40		10/13/40		10/20/40		10/27/40		11/1/40	
Cerelose	1,080,000	690,000	1,035,000	650,000	1,065,000	150,000	1,100,000	170,000	1,110,000	155,000	1,150,000	200,000
Bulk	1,340,000	1,035,000	1,340,000	900,000	1,340,000	700,000	1,380,000	620,000	1,410,000	495,000	1,465,000	450,000
Package	600,000	500,000	595,000	500,000	585,000	500,000	600,000	500,000	600,000	500,000	625,000	500,000
Total	3,000,000	2,225,000	2,970,000	2,050,000	2,990,000	1,350,000	3,080,000	1,290,000	3,120,000	1,150,000	3,240,000	1,150,000

	11/10/40		11/17/40		11/24/40		12/1/40		12/8/40		12/15/40	
Cerelose	1,170,000	160,000	1,300,000	135,000	1,280,000	145,000	1,320,000	195,000	1,340,000	180,000	1,385,000	180,000
Bulk	1,380,000	390,000	1,450,000	370,000	1,385,000	300,000	1,285,000	495,000	1,275,000	960,000	1,260,000	1,290,000
Package	620,000	500,000	630,000	500,000	635,000	500,000	650,000	500,000	655,000	500,000	665,000	500,000
Total	3,170,000	1,050,000	3,380,000	1,005,000	3,300,000	945,000	3,255,000	1,190,000	3,270,000	1,640,000	3,310,000	1,970,000

	12/22/40		1/1/41	
Cerelose	1,475,000	1,380,000	1,425,000	1,125,000
Bulk	1,255,000	1,160,000	1,210,000	925,000
Package	680,000	500,000	695,000	500,000
Total	3,410,000	3,040,000	3,330,000	2,550,000

Joint Exhibit 6-F.

CORN PRODUCTS REFINING COMPANY

ANALYSIS OF "FEED SITUATION" FROM JULY 4, 1938 TO DECEMBER 30, 1940, INCLUSIVE

(In Tons)

	7/4/38		7/11/38		7/18/38		7/25/38		8/1/38		8/8/38	
	Feed	Gluten Meal	Feed	Gluten Meal	Feed	Gluten Meal	Feed	Gluten Meal	Feed	Gluten Meal	Feed	Gluten Meal
Stock	17,186	547	19,312	557	19,953	548	21,296	766	18,241	736	18,958	322
Unfilled Orders	17,683	3,441	17,891	3,273	24,731	5,890	24,947	5,549	18,374	4,748	15,451	4,046
	8/15/38		8/22/38		8/29/38		9/5/38		9/12/38		9/19/38	
Stock	21,793	992	24,921	1,204	27,078	1,708	27,590	1,678	29,644	1,951	31,762	1,971
Unfilled Orders	17,661	5,348	16,467	5,404	14,963	5,146	13,991	3,837	12,815	3,516	25,842	6,872
	9/26/38		10/3/38		10/10/38		10/17/38		10/24/38		10/31/38	
Stock	33,359	1,815	32,175	1,178	34,876	1,180	38,647	1,039	40,564	1,004	38,644	757
Unfilled Orders	25,952	7,362	21,857	6,013	19,370	5,244	20,252	4,644	25,048	6,858	20,229	5,938
	11/7/38		11/14/38		11/21/38		11/28/38		12/5/38		12/12/38	
Stock	36,747	697	39,269	373	39,837	242	41,128	228	39,746	309	41,426	97
Unfilled Orders	15,942	5,027	23,926	5,843	24,373	7,413	22,673	6,726	19,101	5,709	29,576	4,813
	12/19/38		12/26/38		1/2/39		1/9/39		1/16/39		1/23/39	
Stock	43,667	367	44,468	326	41,376	258	40,644	343	40,000	409	38,690	403
Unfilled Orders	31,899	5,922	29,780	5,711	24,643	5,464	36,263	8,174	33,936	7,368	30,050	6,089
	1/30/39		2/6/39		2/13/39		2/20/39		2/27/39		3/6/39	
Stock	36,743	497	34,917	443	34,938	526	34,976	584	33,552	759	30,022	782
Unfilled Orders	25,076	5,258	20,084	4,452	18,566	3,981	29,544	6,176	28,654	5,903	22,949	5,269
	3/13/39		3/20/39		3/27/39		4/3/39		4/10/39		4/17/39	
Stock	28,176	806	25,107	525	22,889	336	18,954	373	15,585	387	14,006	322
Unfilled Orders	20,611	4,320	15,895	3,306	29,396	6,418	23,997	5,438	19,952	4,443	30,152	6,952
	4/24/39		5/1/39		5/8/39		5/15/39		5/22/39		5/29/39	
Stock	11,421	497	5,601	454	4,711	451	5,648	748	7,851	1,183	7,496	1,359
Unfilled Orders	27,913	6,357	19,508	5,509	16,222	4,782	13,776	3,847	20,988	5,741	17,901	5,123
	6/5/39		6/12/39		6/19/39		6/26/39		7/3/39		7/10/39	
Stock	6,897	1,131	8,708	1,617	10,753	1,632	11,322	1,441	12,129	1,185	12,084	1,203
Unfilled Orders	14,282	4,086	13,025	3,537	10,289	3,039	14,915	4,252	12,941	2,583	11,957	2,174
	7/17/39		7/24/39		7/31/39		8/7/39		8/14/39		8/21/39	
Stock	13,878	1,139	14,021	951	14,756	988	14,203	1,044	15,546	1,374	16,747	1,666
Unfilled Orders	10,052	1,671	14,090	4,075	15,616	3,644	12,516	3,380	10,077	3,424	18,675	5,411

Joint Exhibit 6-F.

CORN PRODUCTS REFINING COMPANY

ANALYSIS OF "FEED SITUATION" FROM JULY 4, 1938 TO DECEMBER 30, 1940, INCLUSIVE

(In Tons)

	8/28/39		9/4/39		9/11/39		9/18/39		9/25/39		10/3/39	
	Feed	Gluten Meal	Feed	Gluten Meal	Feed	Gluten Meal	Feed	Gluten Meal	Feed	Gluten Meal	Feed	Gluten Meal
Stock	16,786	1,494	14,934	1,301	13,240	1,310	12,240	1,147	12,505	934	12,227	732
Unfilled Orders	24,037	5,498	21,245	5,040	21,452	4,544	17,558	2,962	19,453	3,138	14,349	2,106
	10/9/39		10/16/39		10/23/39		10/30/39		11/6/39		11/13/39	
Stock	15,825	1,206	19,355	2,298	20,996	3,012	22,591	3,428	22,193	3,658	22,683	3,692
Unfilled Orders	13,219	3,115	11,160	2,595	23,378	4,468	22,461	4,240	18,287	3,904	16,549	3,677
	11/20/39		11/27/39		12/4/39		12/11/39		12/18/39		12/25/39	
Stock	23,641	3,181	22,293	2,240	19,279	1,336	19,192	1,223	20,843	1,410	21,891	1,489
Unfilled Orders	30,573	6,675	28,884	6,414	22,671	5,332	20,665	4,519	35,462	7,335	34,344	7,457
	1/1/40		1/8/40		1/15/40		1/22/40		1/29/40		2/5/40	
Stock	17,344	546	17,697	510	17,536	1,017	18,260	1,461	19,420	1,832	18,640	1,965
Unfilled Orders	27,631	6,384	24,009	5,490	20,488	4,686	25,884	7,084	22,984	6,562	17,572	5,162
	2/12/40		2/19/40		2/26/40		3/4/40		3/11/40		3/18/40	
Stock	20,247	2,463	21,617	3,202	22,879	3,557	20,362	3,525	20,613	3,930	20,781	4,034
Unfilled Orders	14,861	4,386	21,880	6,131	21,931	6,282	17,845	4,649	16,358	4,303	24,801	5,341
	3/25/40		4/1/40		4/8/40		4/15/40		4/22/40		4/29/40	
Stock	20,945	4,776	19,898	4,027	17,473	4,255	17,125	4,325	16,985	4,401	12,644	4,404
Unfilled Orders	25,176	6,298	21,545	5,878	17,468	5,308	29,339	7,273	29,622	6,645	25,296	5,723
	5/6/40		5/13/40		5/20/40		5/27/40		6/3/40		6/10/40	
Stock	8,366	4,405	8,885	4,750	10,359	5,471	13,361	6,794	15,046	7,511	17,153	8,618
Unfilled Orders	17,718	4,711	14,177	3,490	11,919	2,918	10,208	2,262	11,506	2,775	11,619	2,832
	6/18/40		6/24/40		7/1/40		7/8/40		7/15/40		7/22/40	
Stock	19,935	9,601	21,797	10,239	19,933	10,105	17,088	9,614	15,579	9,495	15,151	9,696
Unfilled Orders	11,512	2,727	10,361	2,142	15,911	2,375	13,214	2,274	12,084	2,182	11,291	1,521
	7/29/40		8/5/40		8/12/40		8/19/40		8/27/40		9/2/40	
Stock	14,178	10,208	9,701	9,585	9,996	9,844	11,350	10,924	11,733	11,464	8,548	11,371
Unfilled Orders	21,710	3,726	16,347	4,349	14,541	3,744	12,267	3,112	20,801	6,251	14,654	5,322
	9/9/40		9/16/40		9/23/40		9/30/40		10/7/40		10/14/40	
Stock	8,071	11,677	8,473	11,793	8,417	11,854	6,372	11,288	4,191	10,961	4,507	10,671
Unfilled Orders	13,211	5,958	15,046	4,395	27,284	7,505	25,151	6,286	21,011	4,941	18,358	4,135
	10/21/40		10/28/40		11/4/40		11/11/40		11/18/40		11/25/40	
Stock	4,930	10,635	5,160	9,795	3,016	7,882	4,300	7,751	4,766	6,324	3,459	5,029
Unfilled Orders	33,054	6,194	29,465	7,152	22,280	5,972	18,312	6,210	12,762	5,016	8,760	3,374
	12/2/40		12/9/40		12/16/40		12/23/40		12/30/40			
Stock	2,236	3,024	2,014	2,592	4,168	2,527	6,088	2,794	6,790	2,503		
Unfilled Orders	22,584	5,673	18,138	4,653	12,493	3,663	9,282	2,749	4,957	1,933		

298

Joint Exhibit 7-G.

Graph running from the year 1938 through the year 1941, showing the long position of petitioner at any
299 given time as against the so-called sales commitments.

(PHOTOPRINTS.)

[*For the Convenience of Court and Counsel This Exhibit (Photostatic Copies) Is Bound in on the Opposite Page.*]

300

Corn Products Refining Co. — 1938

[Jnw Exhibit T-C]

JANUARY 5 10 15 20 25 | FEBRUARY 5 10 15 20 25 | MARCH 5 10 15 20 25 | APRIL 5 10 15 20 25 | MAY 5 10 15 20 25 | JUNE 5 10 15 20 25 | JULY 5 10 15 20 25 | AUGUST 5 10 15 20 25 | SEPTEMBER 5 10 15 20 25 | OCTOBER 5 10 15 20 25 | NOVEMBER 5 10 15 20 25 | DECEMBER 5 10 15 20 25

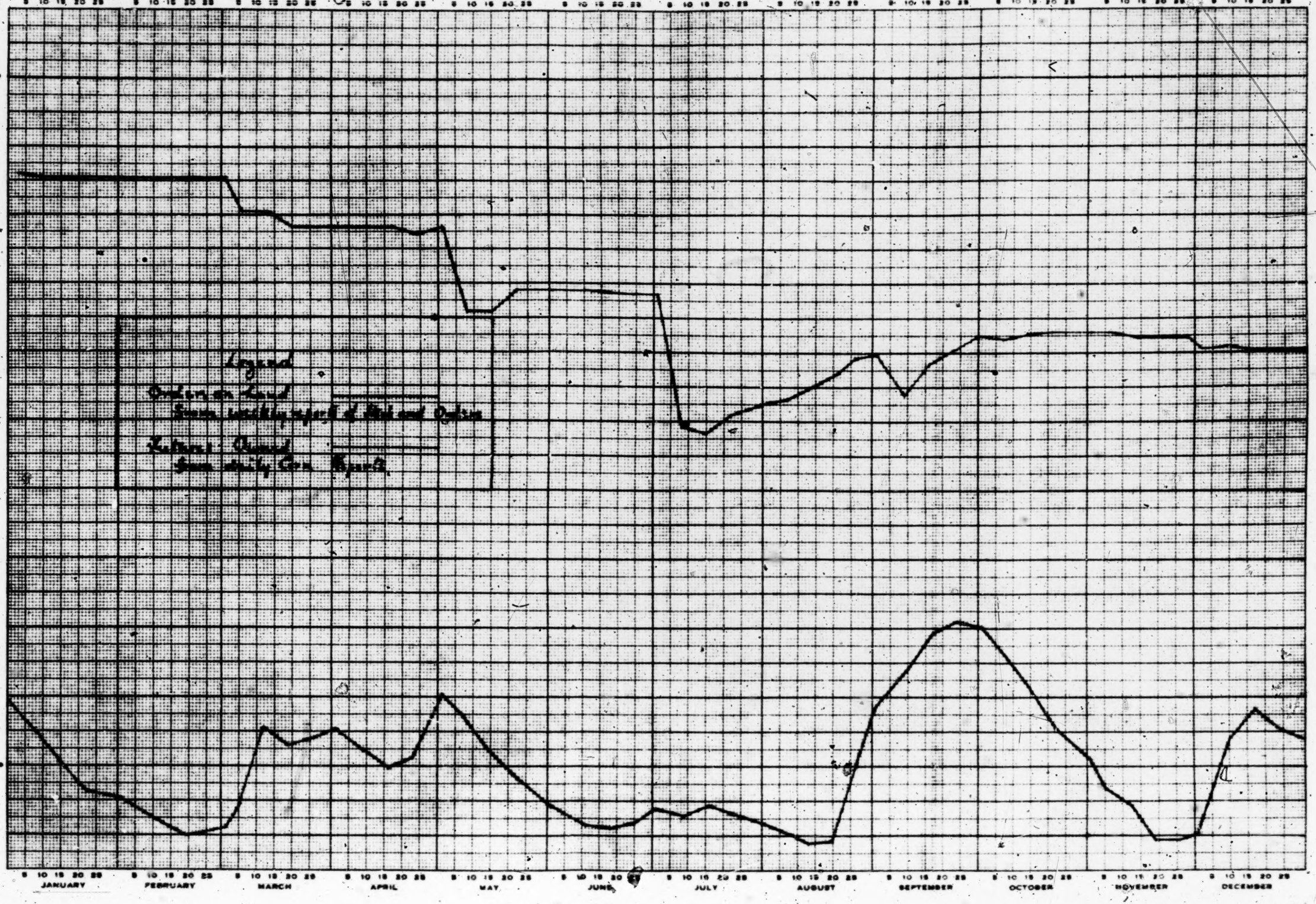
THE TAX COURT OF THE [illegible]
JUN 13 [illegible]
[illegible] 76

Legend
Orders on hand — from weekly reports of Steel and Iron
Production Curve — from daily Corn Report

JANUARY 5 10 15 20 25 | FEBRUARY 5 10 15 20 25 | MARCH 5 10 15 20 25 | APRIL 5 10 15 20 25 | MAY 5 10 15 20 25 | JUNE 5 10 15 20 25 | JULY 5 10 15 20 25 | AUGUST 5 10 15 20 25 | SEPTEMBER 5 10 15 20 25 | OCTOBER 5 10 15 20 25 | NOVEMBER 5 10 15 20 25 | DECEMBER 5 10 15 20 25

A-1

Corn Products Refining Co. ~ 1939



Corn Products Refining Co — 1940

Bushels

12,000,000
11,000,000
10,000,000
9,000,000
8,000,000
7,000,000
6,000,000

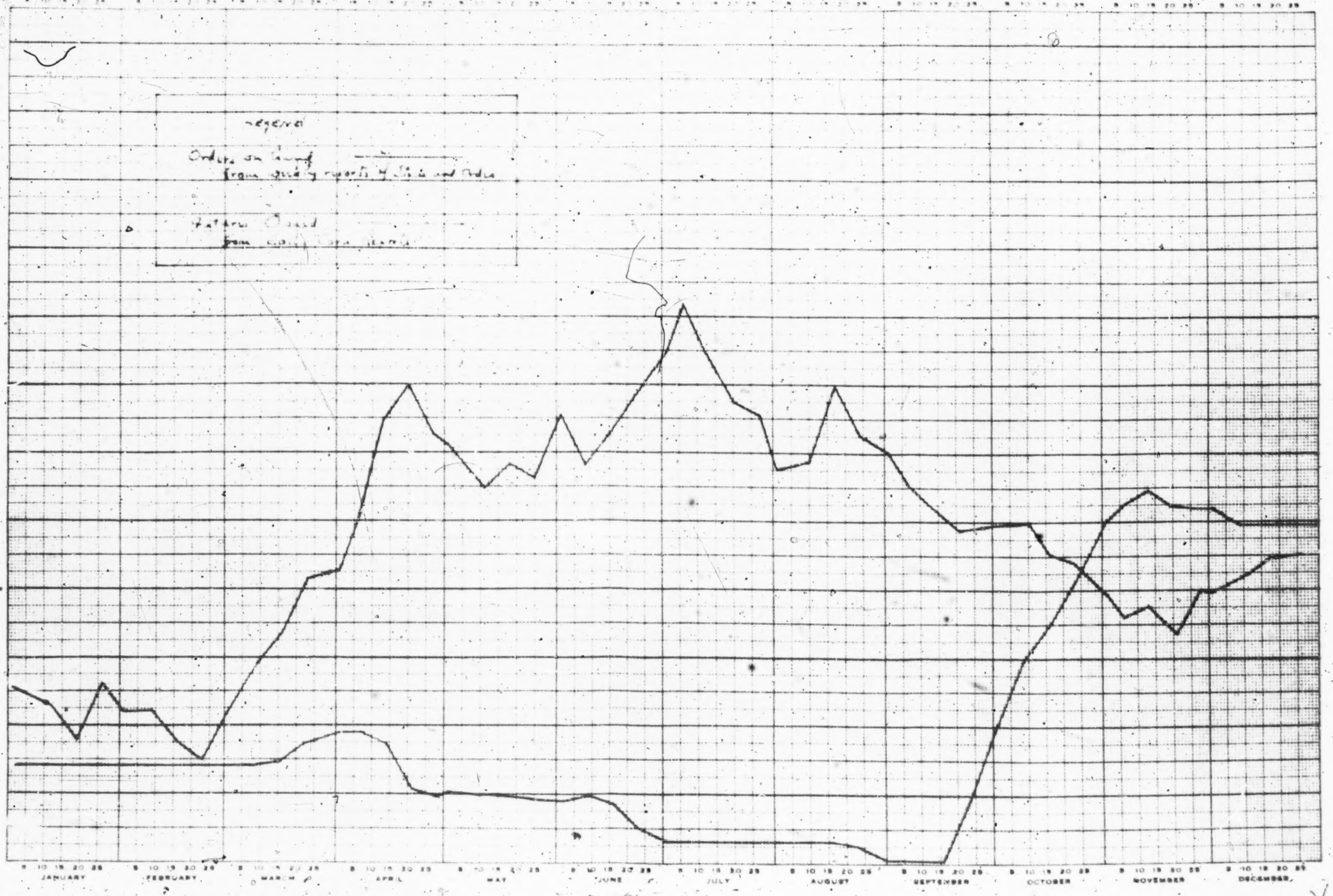
JANUARY 5 10 15 20 25
FEBRUARY 5 10 15 20 25
MARCH 5 10 15 20 25
APRIL 5 10 15 20 25
MAY 5 10 15 20 25
JUNE 5 10 15 20 25
JULY 5 10 15 20 25
AUGUST 5 10 15 20 25
SEPTEMBER 5 10 15 20 25
OCTOBER 5 10 15 20 25
NOVEMBER 5 10 15 20 25
DECEMBER 5 10 15 20 25

Legend

Duplicate on hand
from weekly report of Stock Clerk

Visible Supply
from daily Corn Reports

Cora Production Refining Co. — 1921



N-4

304

Petitioner's Exhibit 8.

Forms of Commodity Exchange Authority and of Food Distribution Administration.

305

(PHOTOPRINTS.)

[*For the Convenience of Court and Counsel This Exhibit (Photostatic Copies) Is Bound in on the Opposite Page.*]

306

Form 304 C. E. 2.

UNITED STATES DEPARTMENT OF AGRICULTURE
COMMODITY EXCHANGE ADMINISTRATION

SEE OTHER SIDE FOR INSTRUCTIONS

Report of _____ (Firm number) as of the close of business on Friday* _____ (Month) (Day) (Year)

WEEKLY STATEMENT OF POSITIONS IN CASH GRAIN AND GRAIN FUTURES

(Thousands of bushels, i. e., 000 omitted. Products and byproducts in terms of grain)

PART I.—CASH-GRAIN POSITION

PART II.—MAKE-UP OF CASH-GRAIN POSITION

Grain	Net Long (1)	Net Short (2)	LONG: Stocks Owned — Grain (3)	Stocks Owned — Products (4)	Stocks Owned — Byproducts (5)**	LONG: Purchase Commitments — Grain (6)	Purchase Commitments — Products (7)	Purchase Commitments — Byproducts (8)	Total Long (9)	SHORT: Sale Commitments — Grain (10)	Sale Commitments — Products (11)	Sale Commitments — Byproducts (12)	Total Short (13)
Wheat													
Corn													
Oats													
Rye													
Barley													
Flaxseed													

PART III.—GRAIN-FUTURES POSITION

Months	Del. Mo.	Wheat Long	Wheat Short	Corn Long	Corn Short	Oats Long	Oats Short	Rye Long	Rye Short	Barley Long	Barley Short	Flaxseed Long	Flaxseed Short
Totals													
Net position in grain hands													

*If Friday is a holiday the report should be made as of the close of business on the last preceding business day.

THE TAX COURT OF THE U.S.
DIV. 2 DOCKET 20399
JUN 13 1950
PETITIONER'S EXHIBIT 8
RESPONDENT'S

Petitioner's Exhibit 8.

INSTRUCTIONS FOR PREPARING AND FILING WEEKLY REPORTS ON ~~FOCM~~ 204 SHOWING POSITIONS IN CASH GRAIN AND GRAIN FUTURES

(See Rules and Regulations under the Commodity Exchange Act)

Persons required to file reports on Form 204.—Every person (individual, association, partnership, corporation, or trust), who is engaged in merchandising, processing, or dealing in, grain or grain products and who holds or controls open contracts in any *one* future of any grain on any contract market, which equal or exceed the amount fixed by the Secretary of Agriculture under authority of section 4i (2) of the Commodity Exchange Act, must report *each week* to the Commodity Exchange Administration on Form 204.

Time of filing.—Reports required on Form 204 must be filed with the Commodity Exchange Administration as soon as possible after the close of business on *Friday* of each week and in any event not later than the close of business on the following business day: *Provided*, That reports may be transmitted by mail, in accordance with instructions furnished by the Commodity Exchange Administration, if mailed not later than midnight of the following business day.

Code.—Use code number assigned to you by the Commodity Exchange Administration; do not use name.

Date.—Show *year* as well as month and day.

Quantities.—Show all quantities in thousands of bushels, that is, "000" omitted. Show grain products and byproducts in terms of grain.

Information required.—Each report on Form 204 must contain the following information with respect to each grain in which you hold or control open contracts in any *one* future thereof on (or subject to the rules of) any contract market equal to or in excess of the amount fixed by the Secretary of Agriculture under authority of section 4i (2) of the Commodity Exchange Act:

(*a*) The amount of your net long or net short cash-grain position in such grain (part I of Form 204).

(*b*) The make-up of your cash-grain position showing (1) the amount of stocks of such grain or products or byproducts thereof, (2) the amount of purchase commitments open in such grain or products or byproducts thereof, and (3) the amount of sale commitments open in such grain or products or byproducts thereof (part II of Form 204). The difference between the amounts shown in columns (9) and (13), with respect to each cash grain reported, must agree with the net position in each such grain shown in part I.

(*c*) Statement showing the amount of your open contracts in all futures of such grain, by markets and by delivery months (part III of Form 204).

Determining cash-grain position.—Your cash-grain position should be determined according to standards and conversion factors applying to products and byproducts usual and common to the business in which you are engaged. If, in determining your cash-grain position for hedging purposes, it be your practice regularly to exclude certain products or byproducts, such products and byproducts should be excluded in reporting your cash-grain position on Form 204.

Report Form 300 C. R. B.
Public Law 272

UNITED STATES DEPARTMENT OF AGRICULTURE
FOOD DISTRIBUTION ADMINISTRATION
COMPLIANCE BRANCH

Bureau Bureau No. [illegible]
Approval expires 1-31-45

Report of _____ as of the close of the market on _____ (Month) _____ (Day) _____ (Year)
(Code number)

STATEMENT OF _____ FUTURES PURCHASES AND SALES, DELIVERIES, OPEN CONTRACTS, ETC., ON, OR SUBJECT TO THE RULES OF, ANY BOARD OF TRADE
(Specify grain)

(REPORT ONE GRAIN ONLY ON THIS SHEET—SEE OTHER SIDE FOR INSTRUCTIONS)

(*Thousands of bushels, i. e., 000 omitted*)

Market	Month of Delivery	Trades and Deliveries: Purchases and Sales: Bought	Trades and Deliveries: Purchases and Sales: Sold	Trades and Deliveries: Deliveries: Delivered	Trades and Deliveries: Deliveries: Received	Open Contracts: Speculative: Long	Open Contracts: Speculative: Short	Open Contracts: Spreading: Long	Open Contracts: Spreading: Short	Open Contracts: Hedging: Long	Open Contracts: Hedging: Short	Open Contracts: Total: Long	Open Contracts: Total: Short
Chicago Board of Trade	May												
	July												
	Sept												
	Dec												
	Total												
Minneapolis Chamber of Commerce	May												
	July												
	Sept												
	Dec												
	Total												
Kansas City Board of Trade	May												
	July												
	Sept												
	Dec												
	Total												
	May												
	July												
	Sept												
	Dec												
	Total												
Kansas City Board of Trade	May												
	July												
	Sept												
	Dec												
	Total												
	May												
	July												
	Sept												
	Dec												
	Total												
Total—All markets													

(TRANSFERS, EXCHANGE OF FUTURES FOR CASH, OR CORRECTIONS OF PREVIOUS REPORTS)

Note.—The word "grain" as used herein means and includes wheat, corn, oats, barley, rye, rice, flaxseed, grain sorghums, and soybeans

INSTRUCTIONS FOR THE PREPARATION AND FILING OF REPORTS ON FORM 203 BY PERSONS HOLDING OR CONTROLLING OPEN CONTRACTS IN ANY ONE FUTURE OF ANY GRAIN EQUAL TO OR EXCEEDING THE AMOUNT FIXED BY THE SECRETARY OF AGRICULTURE UNDER SECTION 4i (2) OF THE COMMODITY EXCHANGE ACT

(See Rules and Regulations Under the Commodity Exchange Act)

BY WHOM FILED.—Every person who either holds or controls *open contracts* in any *one* future of any grain on any one contract market—resulting from transactions made on or subject to the rules of such contract market—which equal or exceed the amount fixed by the Secretary of Agriculture under section 4i (2) of the Commodity Exchange Act is required to report to the Compliance Branch, Food Distribution Administration, on Form 203. Such person must also file a report on this form covering the first day on which his open contracts in such future fall below such amount.

FREQUENCY.—Daily reports are required. However, if on any day you have *no trades or transactions* in any future of a grain previously reported—and there has been no change in your open contracts in any future of such grain—a new report need not be made. In such case the last detailed report filed by you shall be considered as the required report on open contracts on all intervening days.

TIME OF FILING.—Reports required on Form 203 must be filed with the Compliance Branch, Food Distribution Administration, as soon as possible after the close of business *on the day covered by the report* and in any event not later than 9 a. m. on the next following business day: *Provided*, That reports may be transmitted by mail, in accordance with instructions furnished by the Compliance Branch, Food Distribution Administration, if postmarked *not later than midnight* of the day covered by the report.

DATE.—Show *year* as well as month and day.

CODE NUMBER.—After you file your first report on Form 203, or upon application in advance to the Compliance Branch, Food Distribution Administration, you will be given a code number. Use this code number on all reports on Form 203 filed thereafter; do not use name.

QUANTITIES.—Show all quantities in *thousands of bushels*, that is, "000" omitted.

INFORMATION REQUIRED.—Separate reports on Form 203 must be filed covering each grain in which you hold or control open contracts in any one future equal to or exceeding the amount fixed by the Secretary of Agriculture. Each such report on Form 203 must show, by markets and by futures, for the day covered thereby:

(*a*) The amount of such grain bought and the amount sold by you for future delivery on all boards of trade (exchanges).

(*b*) The amount of such grain delivered by you, or received by you, in settlement of futures contracts on all boards of trade (exchanges).

(*c*) The amount of open contracts held or controlled by you *at the close of the day*, classified as to character, i. e., whether speculative, spreading, or hedging, in all futures of such grain on all boards of trade (exchanges). These figures should reconcile with the open contracts shown on the last preceding report.

METHOD OF REPORTING TRADES AND DELIVERIES.—Purchases and sales should be reported as of the date of execution. Deliveries made or received should be reported as of the day on which delivery is finally consummated.

310 **Petitioner's Exhibit 9.**

1940

Yearly average yields (all plants) from commercial corn (#2 Basis)

Their values at prices prevailing June 1—Chicago basis.

Pearl Starch in bags	63.31# @ $ 2.80 — 100# =	$ 1.773
Gluten Feed in bulk	27.13# @ $18.00 Ton =	.244
Oil	3.14# @ $ 5.00 — 100# =	.157

* * * * * *

311 Yearly average cost of corn ground (#2 Basis)

Argo	= Per 100#	$ 1.126
All Plants	= Per 100#	$ 1.115

Comparative yields, Argo Plant only.

Starch	63.22#
Feeds	27.23
Oil	3.13

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312 **Petitioner's Exhibit 10.**

Standard contract.

(PHOTOPRINT.)

[*For the Convenience of Court and Counsel This Exhibit (Photostatic Copy) Is Bound in on the Opposite Page.*]

FORM 823

C. P. S. NO. _____

CORN PRODUCTS SALES COMPANY

WHITEHALL BUILDING
17 BATTERY PLACE
NEW YORK

Date _____

New Business _____

Confirming Wire _____

Trade No. _____

Customers Order No. _____

Brokers No. _____

Dear Sir

We are in receipt of your order through _____ for

THE TAX COURT OF THE U.S.
DIV. 3 DOCKET 20399
ADMITTED IN EVIDENCE
JUN 13 1950
PETITIONER'S EXHIBIT 10
RESPONDENT'S

which is hereby confirmed upon the following terms and conditions

Deliveries to be made as ordered subject to Seller's approval of Buyer's credit, before each shipment.

SHIPMENT F O B cars at point of shipment freight prepaid in (carlots) to be made within 30 days from date of sale, unless otherwise stated above.

SHIPPING INSTRUCTIONS To be furnished by Buyer within 10 days from date of sale and if not so furnished Seller has the option of making shipment within contract period, or to cancel contract without notice.

PAYMENT 2% 10 days in New York or Chicago exchange due at Seller's New York Office within 10 days from date of invoice; 30 days net

If at any time before delivery the financial responsibility of the Buyer becomes impaired or unsatisfactory to the Seller, or Buyer should have failed to make payment for previous shipment in accordance with terms of sale, Seller may cancel any unshipped portion of the contract or require cash payment or satisfactory security before further shipment is made.

DELAYS IN SHIPMENT Seller shall in no case be held responsible for demurrage or storage charges at destination or for any damages arising from delayed shipments caused by strikes, accidents, car shortage, inability to produce supplies or interruptions of manufacture beyond its control, but if shipment is delayed beyond 10 days through Seller's default, Buyer is entitled to any lower market price of Seller in effect on date of shipment or Buyer may cancel delayed order by telegram or letter, provided same is received by the Seller before shipment of such order, otherwise order remains uncancelled.

ROUTING Seller reserves the right to ship from any factory or point and select the routing. Every effort will be made to respect Buyer's wishes as to delivery lines where substantial reason is given. Buyer assumes risk of leakage and damage after delivery to carrier in good condition. Where shortage or damage is apparent on arrival, Buyer should always receipt for goods to the transportation company in damaged condition and notify Seller immediately.

No sales are binding upon this company until accepted in writing at the principal office of Seller in New York. Salesmen and local brokers are not empowered to execute or modify contracts for Seller.

The prepaid price herein named is subject to change either up or down, according to any advance or decline in the freight rate on any portion not shipped at the time such rate change becomes effective.

Seller not to be responsible for the adaptability of the goods to be delivered on this contract for any specific purpose unless specially and separately provided for in this contract.

Any duty, excise or other tax or charge, Federal, State or Municipal, hereafter imposed on the products covered hereby, or its manufacture, refining or sale, shall be added to the price herein specified.

If our regular market price on date of arrival in your market of any shipment against this contract is lower than price at which such shipments are invoiced, you will have the benefit of such lower price.

It is agreed that the goods sold under this contract are for consumption in the United States only and not for export.

Respectfully yours,

CORN PRODUCTS SALES COMPANY

Per _____

THE TAX COURT OF THE U.S.
DIV. 3 DOCKET 20399
ADMITTED IN EVIDENCE
JUN 13 1950
PETITIONER'S EXHIBIT 10
RESPONDENT'S

which is hereby confirmed upon the following terms and conditions

Deliveries to be made as ordered subject to Seller's approval of Buyer's credit, before each shipment.

SHIPMENT F O B cars at point of shipment freight prepaid in (carlots) to be made within 30 days from date of sale, unless otherwise stated above.

SHIPPING INSTRUCTIONS To be furnished by Buyer within 10 days from date of sale and if not so furnished Seller has the option of making shipment within contract period, or to cancel contract without notice.

PAYMENT 2% 10 days in New York or Chicago exchange due at Seller's New York Office within 10 days from date of invoice; 30 days net

If at any time before delivery the financial responsibility of the Buyer becomes impaired or unsatisfactory to the Seller, or Buyer should have failed to make payment for previous shipment in accordance with terms of sale, Seller may cancel any unshipped portion of the contract or require cash payment or satisfactory security before further shipment is made.

DELAYS IN SHIPMENT Seller shall in no case be held responsible for demurrage or storage charges at destination or for any damages arising from delayed shipments caused by strikes, accidents, car shortage, inability to produce supplies or interruptions of manufacture beyond its control, but if shipment is delayed beyond 10 days through Seller's default, Buyer is entitled to any lower market price of Seller in effect on date of shipment or Buyer may cancel delayed order by telegram or letter, provided same is received by the Seller before shipment of such order, otherwise order remains uncancelled.

ROUTING Seller reserves the right to ship from any factory or point and select the routing. Every effort will be made to respect Buyer's wishes as to delivery lines where substantial reason is given. Buyer assumes risk of leakage and damage after delivery to carrier in good condition. Where shortage or damage is apparent on arrival, Buyer should always receipt for goods to the transportation company in damaged condition and notify Seller immediately.

No sales are binding upon this company until accepted in writing at the principal office of Seller in New York. Salesmen and local brokers are not empowered to execute or modify contracts for Seller.

The prepaid price herein named is subject to change either up or down, according to any advance or decline in the freight rate on any portion not shipped at the time such rate change becomes effective.

Seller not to be responsible for the adaptability of the goods to be delivered on this contract for any specific purpose unless specially and separately provided for in this contract.

Any duty, excise or other tax or charge, Federal, State or Municipal, hereafter imposed on the products covered hereby, or its manufacture, refining or sale, shall be added to the price herein specified.

If our regular market price on date of arrival in your market of any shipment against this contract is lower than price at which such shipments are invoiced, you will have the benefit of such lower price.

It is agreed that the goods sold under this contract are for consumption in the United States only and not for export.

Respectfully yours,

CORN PRODUCTS SALES COMPANY

Per _____

Petitioner's Exhibit 10.

316 **Petitioner's Exhibit 11.**

AGREEMENT made this 21st day of April 1927 between CORN PRODUCTS REFINING COMPANY, a New Jersey corporation, hereinafter called "Seller", party of the first part, and HURON MILLING COMPANY, a corporation of Michigan, hereinafter called "Buyer", party of the second part:

Whereas, the Buyer is a producer of various starches made from wheat, corn, and other raw materials, and in the conduct of its business has developed certain formulae and methods for the manufacture of certain specialties from such starches and believes that because of the com-
317 paratively limited capacity and disadvantageous location of its plant at Harbor Beach, Mich. it would be better enabled to substantially increase its business and more successfully meet the competition of other manufacturers of similar products by purchasing its corn starch requirements from one of the substantial producers of that commodity, and

Whereas, the Seller is a substantial producer of corn starch and has facilities, equipment, and economies of operation far superior to those of the Buyer for the manu-
318 facture and shipment of all the corn starches and specialties made therefrom which are produced by the Buyer and is willing to supply the Buyer with its requirements of the products covered by this contract at the price and upon the terms hereinafter provided;

NOW, THEREFORE, in consideration of the premises the parties hereto do hereby agree as follows:

1. *Quantity.* Seller agrees to manufacture and sell to Buyer or on its order, and Buyer agrees to purchase from Seller, Buyer's entire requirements of thin boiling pearl, chlorinated and other special starches, including Hercules

gum, up to a maximum of Thirty Million (30,000,000) 319
pounds per annum during the term of this agreement; provided, however, that the term "Buyer's requirements" as used herein shall not be construed to include any thin boiling starch which may be manufactured by Buyer from corn ground in its own plant.

2. *Quality.* Such of the foregoing products as are now manufactured by Seller shall be its usual standard quality; other products to be manufactured by Seller hereunder shall be made according to and in compliance with specifications, formulae, and manufacturing methods therefor 320
to be furnished by Buyer.

3. *Shipments.* To destinations as ordered by Buyer.

4. *Deliveries.* F. O. B. cars at any of Seller's factories at Seller's option, freight adjusted to Chicago basis. In case of shipment in mixed cars with other products of Seller, Buyer to be charged proportionate cost of actual freight, cartage, and warehousing.

5. *Price.* To be calculated on an estimated base price of $1.80 per one hundred pounds for thick boiling pearl starch (12% moisture) f. o. b., cars, Chicago, in bulk, when 321
Seller's

> cost of corn at Argo (16% moisture) is 70¢ per bushel; price for feed (Chicago) is $28 per short ton; and price of crude corn oil (Chicago) is $8.00 per 100 pounds.
>
> Such base price of thick boiling pearl starch shall be increased at the rate of 3¢ per 100 pounds for each 1¢ per bushel increase in Seller's cost of corn, and decreased at the same rate per 100 pounds for decrease of 1¢ per bushel in such cost of corn.

Petitioner's Exhibit 11.

322 Such estimated cost price for thick boiling pearl starch shall also be increased at the rate of 2¢ per 100 pounds for each decrease of $1.00 per ton in Seller's Chicago price for feed, and decreased at the rate of 2¢ per 100 pounds for each increase of $1.00 per ton in Seller's Chicago price for feed.

Such base price of thick boiling pearl starch shall also be decreased at the rate of 4¢ per 100 pounds for each increase of 1¢ per pound in Seller's price for crude corn oil, and increased at the rate of 4¢ per 100 pounds for each decrease of 1¢ per pound

323 in such price of crude corn oil.

Such estimated base price of thick boiling pearl starch shall also be adjusted up or down with each corresponding increase or decrease of 10¢ per 100 pounds finished product in Seller's cost of coal, which is normally $3.00 per ton, and/or labor, which is normally 60¢ per hour in Seller's wet starch house. These adjustments to be at the rate of 5¢ per 100 pounds of starch for each $1.00 increase or decrease per ton of coal, and at the rate of 1¢ per 100 pounds of starch for each 2¢ per hour increase or decrease in cost of labor.

324 In case finished product analyzes starch of greater or less than 12% moisture, estimated base price of thick boiling starch to be adjusted accordingly. The estimated base price of thick boiling pearl starch (12% moisture) shall, however, never exceed Seller's average monthly net market price for such product, exclusive of packages.

All bags, barrels, cartons, packages, etc. to be added at cost plus actual packing cost.

Buyer agrees to pay Seller for all products manufactured hereunder and delivered to Buyer, or on its order,

the following differentials over the base price of thick boiling pearl starch as above estimated, as follows: 325

Thin boiling pearl starch (12% moisture) 35% per 100 pounds.

Thick or thin crystal starches, either machine or hand packed, 45¢ per 100 pounds.

Large crystals requiring about two weeks to manufacture 55¢ per 100 pounds.

Hercules gum and chlorinated starches at a differential above price of thin boiling pearl to be established and based upon Seller's difference in cost of manufacture between such products.

326

6. In case Buyer's requirements of thin boiling and chlorinated starches shall be in excess of 30,000,000 pounds per annum because of its sales of Hercules gum exceeding 10,000,000 pounds per annum, Seller agrees to manufacture and sell to Buyer an additional quantity of Hercules gum up to a maximum of 10,000,000 pounds per annum at a differential over the base price of thick boiling pearl starch as fixed and adjusted in Paragraph 15 hereof corresponding to the differential above the price for thin boiling pearl starch then in effect for Hercules gum under Paragraph 5 hereof, or to deliver to Buyer a sufficient quantity of thick boiling pearl starch for the manufacture 327
of such excess quantity of Hercules gum at the estimated base price for thick boiling pearl starch as provided in Paragraph 5 hereof, and subject to the same adjustments as therein specified.

7. In case Buyer desires to manufacture any thin boiling or chlorinated starches at its plant at Harbor Beach, Mich., Seller agrees to deliver to Buyer up to a maximum of Five Million (5,000,000) pounds per annum of thick boiling pearl starch of Seller's normal standard quality at

Petitioner's Exhibit 11.

328 Seller's estimated base price for thick boiling pearl starch as fixed and subject to the adjustments as specified in Paragraph 5 hereof.

8. In the event that Buyer shall satisfy Seller that competition of other manufacturers has forced Buyer to sell any of such special starches during any calendar month at prices which shall average less than 15¢ per 100 pounds over the price charged by Seller for such product hereunder during such month, Seller shall reduce its price on such products to such sum as shall equal 15¢ per 100 pounds under Buyer's average selling price obtained there-
329 for during such month, provided, however, that Seller shall not be required to make any reduction which would bring its selling price for such products more than 30¢ per 100 pounds under a sum equal to the base estimated price of thick boiling pearl starch, plus the differential applicable to such product hereunder.

9. *Inspection.* All special starches manufactured by Seller under formulae, processes, or manufacturing methods supplied by Buyer shall be made under the supervision of a representative of Buyer who shall at all times be given
330 free access to Seller's plant for such propose and authorized to approve the quality of such products before delivery. Such inspection and approval shall not, however, relieve Seller from responsibility for defects or inferior quality in any of such products not discoverable by ordinary inspection and/or due to the failure of Seller to accurately follow the instructions for the manufacture thereof given by Buyer.

10. It is understood that the secret specifications, formulae, and manufacturing methods which shall be disclosed to Seller by Buyer, in carrying out the provisions of this contract, are the exclusive property of Buyer and that

Petitioner's Exhibit 11.

Seller will not use any of such specifications, formulae, or manufacturing methods, either directly or indirectly, in the manufacture of any of such products for itself or for others, nor disclosed any thereof to any other person, firm, or corporation and that this clause of this agreement shall be binding during the term of this contract and after the termination thereof. Provided, however, that nothing herein contained shall be construed to prevent Seller from manufacturing and selling similar products under any formulae, processes, or methods which it may now own or which may become commonly known or be acquired from others, or from using similarly made products as an ingredient in or base material for the manufacture of other products not now made by Buyer. 331 332

11. Seller agrees to manufacture and hold in ~~stock~~ reasonable quantities of the products to be made by Seller under the specifications, formulae, or manufacturing methods furnished to it by Buyer hereunder. Buyer shall, however, from time to time notify Seller of the quantities of such respective products required to be kept in stock, which total quantities, however, shall at no time exceed two months' normal requirements of special starches and one months' normal requirements of thin boiling. 333

12. Seller shall not be liable for deliveries under this contract in case of strikes, shortage of cars, corn or fuel, or for any other reason beyond its reasonable control, but in case Seller is not able to promptly fill orders for all of its customers Seller agrees to give Buyer equal preference in shipments and fill Buyer's orders as promptly as possible, having due regard to all of Seller's customers.

13. Seller agrees to furnish Buyer monthly statements showing the stocks of products held by Seller for Buyer's account on the last day of each preceding month.

Petitioner's Exhibit 11.

334 14. Seller further agrees to sell to Buyer and Buyer agrees to purchase from Seller Buyer's entire requirements of ordinary thick boiling pearl and powdered corn starches and edible pearl and powdered starches up to a maximum of Twenty Million (20,000,000) pounds per annum of the usual standard quality manufactured by Seller. Provided, however, that the term "Buyer's requirements", as used herein, shall not be construed to include any thick boiling pearl starch which may be manufactured by Buyer from corn ground in its own plant.

Shipments and deliveries to be made in the same manner
335 as hereinabove provided with respect to thin boiling pearl and other special starches.

15. The price for thick boiling pearl starch, 12% moisture, to be paid by Buyer shall be $2.00 per 100 pounds f. o. b. cars Chicago in bulk when Seller's

cost of corn at Argo (16% moisture) is 70¢ per bushel; price for feed (Chicago) is $28 per short ton; and price of crude corn oil (Chicago) is $8.00 per 100 pounds.

Such base price of thick boiling pearl starch shall be increased at the rate of 3¢ per 100 pounds for
336 each 1¢ per bushel increase in Seller's cost of corn, and decreased at the same rate per 100 pounds for decrease of 1¢ per bushel in such cost of corn.

Such estimated cost price for thick boiling pearl starch shall also be increased at the rate of 2¢ per 100 pounds for each decrease of $1.00 per ton in Seller's Chicago price for feed, and decreased at the rate of 2¢ per 100 pounds for each increase of $1.00 per ton in Seller's Chicago price for feed.

Such base price of thick boiling pearl starch shall also be decreased at the rate of 4¢ per 100 pounds for each increase of 1¢ per pound in Seller's price

Petitioner's Exhibit 11.

for crude corn oil, and increased at the rate of 4¢ per 100 pounds for each decrease of 1¢ per pound in such price of crude corn oil. 337

Such estimated base price of thick boiling pearl starch shall also be adjusted up or down with each corresponding increase or decrease of 10¢ per 100 pounds finished product in Seller's cost of coal, which is normally $3.00 per ton, and/or labor, which is normally 60¢ per hour in Seller's wet starch house. These adjustments to be at the rate of 5¢ per 100 pounds of starch for each $1.00 increase or decrease per ton of coal, and at the rate of 1¢ per 100 pounds of starch for each 2¢ per hour increase or decrease in cost of labor. 338

In case finished product analyzes starch of greater or less than 12% moisture, estimated base price of thick boiling starch to be adjusted accordingly.

Provided, however, that the price to be paid by Buyer hereunder for ordinary thick boiling pearl starch shall at no time be lower than 50¢ per 100 pounds below Seller's net market price for ordinary thick boiling pearl starch in bulk f. o. b. cars Chicago, and no higher than the net market price for ordinary pearl starch. 339

The price for edible pearl, ordinary powdered and edible powdered starches to be paid by Buyer shall exceed the price to be paid for ordinary thick boiling pearl starch as follows:

Edible pearl starch 2½¢
Ordinary powdered starch 10¢
Edible powdered starch 12½¢

Provided, however, that the differential of edible pearl, ordinary powdered, and edible powdered starches over

340 thick boiling pearl starch to be paid by Buyer hereunder shall at no time exceed Seller's current differential between such products in the general market.

16. Thick boiling pearl and powdered and edible starches to be delivered by Seller hereunder are sold for the use of Buyer in its own manufacturing business and not to be sold by it except as the same have been so modified and blended with other products that they have become different in type or working quality; provided, however, that the provisions of this paragraph shall not be applicable to the existing contract between Buyer and the
341 Larkin Company of Buffalo, N. Y. relating to the sale of certain starches, or any similar renewal thereof.

17. For the purpose of determining Seller's cost of corn and price of crude corn oil at Chicago in making adjustments of base price of thick boiling pearl starch under the provisions of this contract shall be determined by the methods customarily used by Seller in the conduct of its business, which methods and the computations used therein shall at all times be open to inspection by a representative of the Buyer.

342 18. All deliveries made by Seller hereunder in any one month shall be invoiced to Buyer on the fifteenth day of the succeeding month, and paid for by Buyer within ten days from receipt of invoice.

19. This contract shall not be assignable by either party without the consent of the other.

20. This contract shall commence on the day of 1927, and continue for the term of fifteen (15) years, and at the option of Buyer, to be exercised by giving written notice thereof to Seller on or before December

Petitioner's Exhibit 11.

31st, 1940, may be extended for an additional period of ten (10) years, making twenty-five (25) in all. 343

IN WITNESS WHEREOF the parties hereto have caused these presents to be duly executed the day and year first above written.

CORN PRODUCTS REFINING COMPANY
By E. T. Bedford
President

F. T. FISHER
Secretary

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HURON MILLING COMPANY
By Geo. J. Jenks
President

J. C. JENKS
Secretary

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UNITED STATES 1940

RETURN OF INFORMATION AND AUTHORIZATION AND CONSENT OF SUBSIDIARY CORPORATION INCLUDED IN A CONSOLIDATED INCOME TAX RETURN OF RAILROAD CORPORATIONS OR PAN-AMERICAN TRADE CORPORATIONS

For Calendar Year 1940

Refinacoes de Milho
Caixa Postal #2972
Sao Paulo, Brazil

347 (1) Date incorporated November 16, 1928 Under laws of State of New Jersey

(2) Capital stock outstanding at beginning of taxable year: (*a*) Com., $100,000.

(3) Kind of business Manufacture of products from corn Active or inactive Active.

(4) Name of common parent corporation Corn Products Refining Company

(5) Address of common parent corporation 17 Battery Place, New York, N. Y.

(6) Internal revenue district in which consolidated return is filed. 2nd—New York

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Joint Exhibit 12-H.

UNITED STATES 1940 349
CORPORATION INCOME, DECLARED VALUE EXCESS-PROFITS, AND DEFENSE

TAX RETURN

For Calendar Year 1940

Corn Products Refining Company and
Refinacoes de Milho Consolidated Return
17 Battery Place
New York New York New York

Kind of business: Manufacture of products made from corn.

NORMAL-TAX NET INCOME COMPUTATION

Item No.	GROSS INCOME		350
1.	Gross sales (where inventories are an income-determining factor) $64,880,927.95 Less: Returns and allowances $9,455,212.87	$55,425,715.08	
2.	Less: Cost of goods sold. (From Schedule A)	37,228,672.72	
3.	Gross profit from sales	$18,197,042.36	
7.	Interest on loans, notes, mortgages, bonds, bank deposits, etc. (See Instruction 17-(1))	245,135.77	
8.	Interest on obligations of the United States. (From Schedule M, line 15-(*a*) (4).) (See Instruction 17-(2))	2,629.69	
10.	Royalties. (See Instruction 19)	383,272.84	351
11.	(*b*) Net long-term capital gain (or loss). (From Schedule C)	3,903,756.88	
12.	Dividends. (From Schedule E)	2,928,583.54	
13.	Other income. (State nature)	87,555.04	
14.	Total income in items 3, and 6 to 13, inclusive		$17,940,462.36

DEDUCTIONS

15.	Compensation of officers. (From Schedule F)	$ 522,600.00
16.	Salaries and wages (not deducted elsewhere)	1,995,673.26
17.	Rent. (See Instruction 21)	84,413.54

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352	18.	Repairs. (See Instruction 22)	2,027,442.95	
	19.	Bad debts. (From Schedule G)	1,779.03	
	20.	Interest. (See Instruction 24)	4,265.75	
	21.	Taxes. (From Schedule H.) (Report declared value excess-profits tax as item 31)	980,613.60	
	22.	Contributions or gifts paid. (From Schedule I)	9,280.00	
	24.	Depreciation. (From Schedule J)	1,512,331.80	
	27.	Amortization. (Submit schedule; see Instruction 31)	882.68	
353	28.	Other deductions authorized by law. (From Schedule K)	2,055,823.13	
	29.	Total deductions in items 15 to 28, inclusive		9,195,105.74
	30.	Net income for declared value excess-profits tax computation (item 14 minus item 29)		$ 8,745,356.62
	31.	Less: Declared value excess-profits tax. (See Instruction 33)		None
	32.	Net income		$ 8,745,356.62
	33.	Less: Interest on obligations of the United States (item 8 above)		2,629.69
354	34.	Adjusted net income		$ 8,742,726.93
	35.	Less: Dividends received credit (85 percent of column 2, Schedule E, but not in excess of 85 percent of item 34, above)		1,042,317.54
	36.	Normal-tax net income		$ 7,700,409.39

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TOTAL INCOME, DECLARED VALUE EXCESS-PROFITS, AND DEFENSE TAXES

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37.	Total income and income defense taxes (line 35, page 2)	$ 1,848,098.26	
38.	Less: Credit for income taxes paid to a foreign country or United States possession allowed a domestic corporation. (See Instruction 37)	252,218.66	
39.	Balance of income and income defense taxes		$ 1,595,879.60
40.	Total declared value excess-profits and declared value excess-profits defense taxes (line 10, page 2)		None
41.	Total income, declared value excess-profits, and defense taxes due		$ 1,595,879.60

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DECLARED VALUE EXCESS-PROFITS AND DECLARED VALUE EXCESS-PROFITS DEFENSE TAX COMPUTATION. (See Instruction 7)

1.	Net income for declared value excess-profits tax computation (item 30, page 1)	$ 8,745,356.62	
2.	Value of capital stock as declared in your capital stock return for the year ended June 30, 1940 (or for year ended June 30, 1941, if your income tax fiscal year began in 1940 and ended on or after July 31, 1941)		
	C.P.R.–$137,445,630.—		
	$ R.D.M. 479,765.—		
3.	10 per cent of line 2	$13,792,539.30	
4.	Dividends received credit (85 percent of column 2, Schedule E, but not in excess of 85 percent of item 34, page 1)	1,042,317.54	14,834,857.04
5.	Balance subject to declared-value excess-profits tax (line 1 minus total of lines 3 and 4)		$ None
10.	Total declared value excess-profits and declared value excess-profits defense taxes		$ None

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358 CORPORATIONS WITH NORMAL-TAX NET INCOMES OF $38,565.89 OR MORE. (See Instruction 35-(1))

22.	Normal-tax net income (item 36, page 1)	$ 7,700,409.39	
23.	Income tax (22.1 percent of line 22)		$ 1,701,790.48
24.	Income defense tax (1.9 percent of line 22)		$ 146,307.78
33.	Total income tax (line 15, 20, 23, 26, or 1, above, whichever is applicable)		$ 1,701,790.48
34.	Total income defense tax (line 16, 21(*a*), 21 (*b*), 24, 27, or 32, above, whichever is applicable)		146,307.78
359 35.	Total income and income defense taxes		$ 1,848,098.26

Schedule A.—COST OF GOODS SOLD. (See Instruction 16)

(Where inventories are an income-determining factor)

Schedule Attached

Schedule C.—CAPITAL GAINS AND LOSSES. (See Instruction 20)

Schedule Attached

Schedule E.—INCOME FROM DIVIDENDS

Schedule Attached

Schedule G.—BAD DEBTS. (See Instruction 23) (See note 1)

360

1. Taxable year	2. Net Income Reported	3. Sales on Account	4. Bad Debts Charged Off by Corporation if No Reserve is Carried on Books (See note 2)
1940. (See note 2)	$8,745,356.62	$64,880,927.95	$1,779.03

1. Check whether deduction claimed represents worthless debts charged off ☒, or is an addition to a reserve ☐.

Schedule H.—TAXES. (See Instruction 25)

Schedule Attached

Schedule I.—CONTRIBUTIONS OR GIFTS PAID. (See Instruction 26)

Schedule Attached

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Schedule J.—Depreciation. (See Instruction 28) 361

Schedules attached

Schedule K.—Other Deductions. (See Instructions 32)

Schedules attached

Questions

1. Date of incorporation C.P.R. Co—February 6, 1906 Ref. de Milho November 16, 1928

2. State or country New Jersey (both companies)

3. State collector's office where the corporation's return for the preceding year was filed 2nd New York (both companies) 362

4. The corporation's books are in care of W. D. Braidwood Comptroller Located at 17 Battery Place, New York, N. Y.

7. Is the corporation a personal holding company within the meaning of section 501 of the Internal Revenue Code? No

8. Is this a consolidated return of railroad corporations or Pan-American trade corporations? Yes

9. If this is not a consolidated return of railroad corporations of Pan-American trade corporations, (*a*) did you own at any time during the taxable year 50 percent or more of the voting stock of another corporation either domestic or foreign? Yes; or (*b*) did any corporation, individual, partnership, trust, or association own at any time during the taxable year 50 percent or more of your stock? No

10. Is this return made on the basis of cash receipts and disbursements? No 363
If not, describe fully what other basis or method was used in computing net income Accrual

11. State whether the inventories at the beginning and end of the taxable year were valued at cost, or cost or market, whichever is lower .....
If other basis is used, described fully, state why used, and the date inventory was last reconciled with stock cost or market—whichever is lower

12. Did the corporation make a return of information on Forms 1096 and 1099 for the calendar year 1940 (see Instructions 8–(1))? Yes

13. Did the corporation at any time during the taxable year own directly or indirectly any stock of a foreign corporation? (Answer "yes" or "no") Yes

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364 Schedule L.—Balance Sheets. (See Instruction 13)

Schedule Attached

Schedule M.—Reconciliation of Net Income and Analysis of Earned Surplus and Undivided Profits

Schedule Attached

Excess Profits Tax (Second Revenue Act of 1940).

(See Instructions for Form 1121)

(*a*) Is an excess profits tax return on Form 1121 being filed for the taxable period covered by this return? Yes

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CORN PRODUCTS REFINING COMPANY AND REFINACOES DE MILHO
CONSOLIDATED RETURN
17 BATTERY PLACE NEW YORK, N. Y.

CORPORATION INCOME, DECLARED VALUE EXCESS-PROFITS, AND DEFENSE TAX RETURN, 1940

SCHEDULE SHOWING HOLDINGS BY CORN PRODUCTS REFINING COMPANY IN DOMESTIC AFFILIATED COMPANIES

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Name of Corporation.	Address of Corporation	Percentage of Stock Owned	Date Stock was Acquired	Collector's Office in which Return was filed
Bedford Construction Company	New York, New York	100%	1920	2nd New York
Corn Products Sales Company	" "	100%	1921	"
Corn Products Sales Company (A Mass. Trust)	" "	100%	1937	"
Chicago, Peoria and Western Railway	" "	100%	1906	"
Crystal Car Line	" "	100%	1906	"
Hummel and Downing Company	Milwaukee, Wisc.	100%	1920	"
Independent Starch Company	New York, New York	100%	1930	"
The Investment Company	" "	100%	1923	"
National Starch Company	" "	99.56%	1906	"
Refinacoes de Milho (American Corporation)	Brazil	100%	1930	"

Joint Exhibit 12-H.

CORN PRODUCTS REFINING COMPANY AND REFINACOES DE MILHO CONSOLIDATED RETURN

17 BATTERY PLACE NEW YORK, N. Y.

CORPORATION INCOME, DECLARED VALUE EXCESS PROFITS, AND DEFENSE TAX RETURN—1940

SCHEDULE A—COST OF GOODS SOLD

CORN PRODUCTS REFINING COMPANY				
Inventory at beginning of year				4,988,134.25
Material or merchandise bought for sale				23,492,978.87
Salaries and wages—				
Manufacturing expense—Argo	2,932,328.35			
" " —Edgewater	324,400.33			
" " —Pekin	1,311,189.43			
" " —Kansas City	687,378.75			
Argo Can Plant	136,625.29			
Kansas City Can Plant	39,504.38			
Edgewater Can Plant	16,435.59			
Carton and Print Shop	76,506.73			
General expense manufacturing department	304,732.40			
Research and development	225,132.25	6,054,233.50		
Less Repairs transferred to Item #18		1,079,438.11		4,974,795.39
Other Costs per Books				
Manufacturing expense—Argo	2,793,078.25			
" " —Edgewater	137,696.46			
" " —Pekin	1,282,525.65			
" " —Kansas City	659,930.49			
Argo Can Plant	840,429.35			
Kansas City Can Plant	327,242.30			
Edgewater Can Plant	90,734.22			
Carton and Print Shop	340,777.47			
General expense manufacturing department	118,503.67			
Research and development	90,668.53	6,683,566.39		
Less: Repairs transferred to Item #18	948,004.84			
Dep'n " " #24	4,630.14	952,634.98	5,730,931.41	
Packages			4,500,314.33	10,231,245.74
Less: Can Plant Sales			2,050,606.25	
Carton and print shop sales			543,647.78	
Cash discount earned			65,277.13	
Stores adjustment			33,895.24	2,693,426.40 7,537,819.34
				40,393,727.85
Less: Inventory at the end of the year				4,890,885.60
Cost of Goods Sold—Corn Products Refining Company				36,192,842.25
REFINACOES DE MILHO				
Inventory at beginning of the year				76,246.66
Material or merchandise bought for sale				513,165.15
Other costs per Books				
Manufacturing expenses			438,452.15	
Packages			135,541.44	
Dismissal of employees			31.79	
Pension funds			2,985.69	
Royalties			18,974.45	595,985.52
Less cash discount earned				6,964.44 589,021.08
				1,178,432.89
Less: Inventory at end of year				142,602.42
Cost of Goods Sold—Refinacoes de Milho				1,035,830.47
TOTAL—Line 2, page 1 of Return				37,228,672.72

Joint Exhibit 12-H

CORN PRODUCTS REFINING COMPANY AND REFINACOES DE MILHO CONSOLIDATED RETURN

CORN PRODUCTS REFINING COMPANY

17 Battery Place New York, N. Y.

CORPORATION INCOME, DECLARED VALUE EXCESS-PROFITS AND DEFENSE TAX RETURN 1940

SCHEDULE C—CAPITAL GAINS AND LOSSES

	Short Term Gains and Losses	Date Acquired	Date Sold or Called	Cost	Amount Received	Profit or Loss
250 M	Commercial Credit Company	7/25/40	10/23/40	249,687.50	249,687.50	
200 M	Commercial Credit Notes due 9/6/40	4/1/40	9/5/40	199,561.11	199,561.11	
5 M	County of Newcastle, Delaware	11/20/39	6/1/40	5,105.83	5,000.00	105.83
20 M	New Orleans, Texas & Mexico 5's due 1935	6/19/39 to 9/26/39	3/26/40	500.00	500.00	
68 M	New Orleans, Texas & Mexico 5's due 1954	5/4/39 to 9/7/39	3/26/40	1,700.00	1,700.00	
35 M	New Orleans, Texas & Mexico 5½'s due 1954	5/25/39 to 9/13/39	3/26/40	962.50	962.50	
46 M	New Orleans, Texas & Mexico 4½'s due 1956	5/3/39 to 8/10/39	3/26/40	1,035.00	1,035.00	
31 M	New Orleans, Texas & Mexico 5's due 1956	5/31/39 to 7/10/39	3/26/40	775.00	775.00	
36 M	Province of Quebec 3's due 7/15/40	8/17/39	7/15/40	36,733.96	36,000.00	733.96
70 M	Twelve Federal Intermediate Credit Banks	9/15/39	2/2/40	70,065.98	70,000.00	65.98
175 M	United States of America 3⅜'s due 1943 (Exchanged)	12/14/39	6/15/40	179,812.50	175,000.00	4,812.50
936 M	Total Short Term Bonds			745,939.38	740,221.11	5,718.27

	Long Term Gains and Losses					
	Bonds					
150 M	Chgo., Milw., St. Paul & Pacific R. R. 5/2000	6/24/28	11/29/40	104,703.40	1,312.46	103,391.00
195 M	Chgo., Milw., St. Paul & Pacific R. R.	3/5/28	11/29/40	186,837.50	7,779.60	179,057.90
56 8/10 M	Chgo., Milw., St. Paul & Pacific R. R.	3/5, 3/28, 3/29, 4/5/28	11/26/40	35,569.90	2,479.43	33,090.47
80 M	Chicago and Northwestern 4¾'s due 1949	11/23/29	11/20/40	80,125.00	711.20	79,413.80
17 M	Denver and Rio Grande Western 5/55	10/4, 10/7/26	11/20/41	9,061.00	169.97	8,891.03
183 M	Denver and Rio Grande Western 5/55	1926 and 1929	12/26/40	161,421.25	1,408.92	160,012.33
88 M	Int. Great Northern 6/52	9/8/24	12/26/40	87,780.00	6,742.32	81,037.68
25 M	State of New York 5's	6/20/38	3/1/40	26,766.24	25,000.00	1,766.24
100 M	P. and R. Coal and Iron 6/49	6/6, 6/7, 6/10/29	12/26/40	95,426.25	3,096.14	92,420.11
94 M	Puerto Rico 2¾'s due Jan. 1	4/21/36	1/3/40	96,159.50	94,000.00	2,159.50
	Prudence Securities Corp.	7/16/37	2/28/40	4,090.28	4,090.28	--
	Stocks					
600 shs.	B. M. T. Preferred Certificates	1/4/26, 11/29/26, 1/30/28	3/11/40	53,245.00	35,922.76	17,322.24
300 "	B. M. T. Preferred Certificates	1/30/28	3/12/40	25,410.00	18,017.63	7,392.37
600 "	B. M. T. Preferred Certificates	2/28/28, 1/5/33	3/11/40	44,157.50	36,147.75	8,009.75
1,800 "	B. M. T. Preferred Certificates	6/12, 6/13, 6/14, 6/15, 7/19, 1933	1/2/40	81,100.00	60,583.72	20,516.28
1,000 "	B. & O. R. R. Co.	6/9/29, 10/25/29, 5/5/30, 5/7/30	12/26/40	116,713.55	3,054.91	113,658.64
200 "	Electric Bond and Share $6 Preferred	12/8/27	5/9/40	21,850.00	13,959.72	7,890.28
5,000 "	Erie 1st Preferred	1/18, 1/20, 1/23, 2/8, 12/17/28	10/23/40	302,887.50	6,087.19	296,800.31
3,000 "	Hecker Products	11/26/29, 6/23/30	12/26/40	121,600.00	20,554.30	101,045.70
1,000 "	International Tel. & Tel.	3/26, 3/27, 5/5, 5/6/30	12/26/40	62,075.00	2,189.95	59,885.05
3,000 "	Lehigh Coal and Nav. Co.	3/21/30	12/26/40	141,312.50	5,994.86	135,317.64
1,000 "	Missouri-Kansas & Texas R. R.	1/2/30	10/17/40	37,062.50	469.97	36,592.53
2,900 "	M. K. & T. Preferred	3/29, 3/30/26,	10/23/40	246,043.69	5,688.27	240,355.42
500 "	M. K. & T. Preferred	2/15, 4/18/27, 2/15,	10/24/40	45,188.41	912.45	44,275.99
3,200 "	M. K. & T. Preferred	10/11/29, 12/30/32	10/25/40	225,692.87	5,439.82	220,253.05
2,600 "	Missouri Pacific Preferred	5/22, 23, 26, 29/30	10/23/40	264,812.50	242.46	264,570.04
100 "	New York, New Haven & Hartford Pref. 10/6, 12/30/27, 11/25/29		10/22/40	10,675.00	29.36	10,645.64
2,100 "	New York, New Haven & Hartford Pref. 10/6, 12/30/27, 11/25/29		10/23/40	334,525.00	922.18	333,602.82
1,800 "	New York, New Haven & Hartford Pref. 10/6, 12/30/27, 11/25/29		10/24/40	200,837.50	460.41	200,377.09
2,600 "	Southern Pacific	11/25/25, 1/25/26, 12/17/26, 6/19/28	12/26/40	277,070.50	19,613.59	257,456.91
100 "	South Porto Rico Sugar	6/8/34	4/20/40	2,907.86	2,884.94	22.92
300 "	South Porto Rico Sugar	6/9/33	4/22/40	8,545.00	8,654.82	109.82
300 "	South Porto Rico Sugar	7/16/34	4/23/40	11,107.50	8,642.32	2,465.18
100 "	South Porto Rico Sugar	7/16/34	4/29/40	3,702.50	2,909.94	792.56
200 "	South Porto Rico Sugar	7/16/34	4/30/40	7,392.50	5,794.88	1,597.62
4,000 "	Western Pacific R. R. Preferred	Prior to 1931	10/17/40	173,812.50	946.09	172,866.41
6,160 "	National Starch Products 1st Preferred	Prior to 12/31/34	2/3/40	615,000.00	538,000.00	77,000.00
	Sale of blocked foreign currency					918,344.05
						1,594,258.25
	Total long term capital loss					3,903,756.88

Joint Exhibit 12-H.

CORN PRODUCTS REFINING COMPANY and REFINACOES DE MILHO CONSOLIDATED RETURN
17 Battery Place New York, New York

CORPORATION INCOME, DECLARED VALUE, EXCESS PROFITS, and DEFENSE TAX RETURN 1940

SCHEDULE E—INCOME FROM DIVIDENDS

NAME and ADDRESS OF CORPORATIONS					
CORN PRODUCTS REFINING COMPANY					
DOMESTIC CORPORATIONS.					
AFFILIATED COMPANIES					
Corn Products Sales Co.	17 Battery Place	New York, N. Y.	350,000.00		
Corn Products Sales Co. (A Mass. Trust)	17 Battery Place	New York, N. Y.	75,250.00		
Investment Company, The	17 Battery Place	New York, N. Y.	50,090.00		
New England Grain Co.	177 Milk Street	Boston, Mass.	448,131.10	923,381.10	
OTHER COMPANIES					
Alabama Great Southern Ry. Co.	60 Wall Tower	New York, N. Y.	22,500.00		
Aluminum Co. of America	230 Park Avenue	New York, N. Y.	12,000.00		
American Tel. & Tel. Co.	195 Broadway	New York, N. Y.	15,300.00		
Atchison, Topeka & Santa Fe Ry. Co.			3,000.00		
Brach, E. J., and Sons	4656 W. Kinzie St.	Chicago, Ill.	700.00		
Columbia Gas & Elec. Co.	61 Broadway	New York, N. Y.	9,000.00		
Commercial Molasses			105,000.00		
Commercial Solvents Corp.	230 Park Avenue	New York, N. Y.	8,525.00		
Consolidated Edison Co. of N. Y.	40 Irving Place	New York, N. Y.	1,000.00		
Cooperative G. L. F.		Buffalo, N. Y.	1.50		
Curtis Publishing Co.	Independence Square	Philadelphia, Pa.	4,125.00		
Electric Bond & Share Co.	2 Rector Street	New York, N. Y.	9,900.00		
Great Northern Railroad Co.			1,500.00		
Great Western Sugar Co.	Sugar Building	Denver, Colo.	6,230.00		
Hecker Products Corp.	88 Lexington Ave.	New York, N. Y.	1,800.00		
Lehigh Coal & Navigation Co.	1421 Chestnut St.	Philadelphia, Pa.	900.00		
National Biscuit Co.	449 West 14th St.	New York, N. Y.	6,600.00		
National City Bank of N. Y.	55 Wall St.	New York, N. Y.	3,000.00		
National Starch Products Co.	820 Greenwich St.	New York, N. Y.	359.33		
North American Co.	60 Broadway	New York, N. Y.	3,900.00		
Pennsylvania R. R. Co.	Broad St. Sta. Bldg.	Philadelphia, Pa.	8,250.00		
Prudential Investors, Inc.	15 Exchange Place	Jersey City, N. J.	1,584.00		
Public Service Corp. of N. J.	80 Park Place	Newark, N. J.	14,400.00		
South Porto Rico Sugar Co.	15 Exchange Place	Jersey City, N. J.	31,400.00		
Southern Calif. Edison Co., Ltd.	Edison Bldg.	Los Angeles, Calif.	5,500.00		
Union Pacific Railway Co.	120 Broadway	New York, N. Y.	21,000.00		
Virginian Railway Co., The	44 Wall Street	New York, N. Y.	5,400.00	302,874.83	1,226,255.93
FOREIGN CORPORATIONS					
Refinerias de Maiz, S. R. L.		Argentina	153,400.00		
Canada Starch Co.		Canada	201,523.22		
Corn Products Co., Ltd.		England	581,820.31		
Corn Products Company		Holland	82,511.01		
N. V. Stijfsel en Glucose Fabriek		Holland	282,263.75		
Corn Products Company		India	14,903.15		
Nippon Kokusan Kogyo K. K.		Japan	169,191.67		
Corn Products Company		Switzerland	2,724.18		
A. D. Za Preradu Kukuruza		Yugoslavia	4,731.46		
Deutsche Maizena Werke, A. G.		Germany	40,320.00		
Gesellschaft fur Industriebeteiligungen m.b.H.		"	40,320.00		
Transport und Lagerhaus Gesellschaft m.b.H.		"	5,616.00		
Finkenheerder Obstwerke, A. G.		"	1,036.80		
Mondamin Gesellschaft m.b.H.		"	3,456.00		
C. H. Knorr, A. G.		"	4,890.62		
Maizenahaus Gesellschaft m.b.H.		"	5,760.00		
Maizena Brasil, S. A.		Brazil	101,448.93		
Corn Products Company		Egypt	5,133.46		
				1,701,050.56	
TOTAL					2,927,306.49
REFINACOES DE MILHO					
Artefactos de Papelao, Ltd.		Brazil			1,277.05
Total as per Item 12, page one					2,928,583.54

Joint Exhibit 12-H.

376 CORN PRODUCTS REFINING COMPANY &
REFINACOES DE MILHO CONSOLIDATED RETURN

17 Battery Place New York, New York

CORPORATION INCOME, DECLARED VALUE
EXCESS-PROFITS AND DEFENSE TAX RETURN 1940

SCHEDULE H—TAXES

	Corn Products Refining Company		
	Federal		
377	Transfer taxes	8,174.62	
	Capital stock	159,189.50	
	Admission	500.00	
	Excise	76,377.91	
	Old Age Benefit	75,038.51	319,280.54
	State and Municipalities		
	Real state	237,428.15	
	Personal Property	115,915.27	
	Franchise	26,353.21	
	Income	19,734.76	
	License	10,219.68	
378	Excise	879.42	
	Sales	1,036.98	
	Miscellaneous	1.48	411,568.95
	Federal and State		
	Unemployment insurance tax		224,866.16
			955,715.65
	Refinacoes de Milho		
	Miscellaneous		24,897.95
	Total as per Item #21, page 1		980,613.60

HCH:RA

Joint Exhibit 12-H.

CORN PRODUCTS REFINING COMPANY AND REFINACOES DE MILHO CONSOLIDATED RETURN 379
17 Battery Place New York, N. Y.

CORPORATION INCOME, DECLARED VALUE EXCESS PROFITS, AND DEFENSE TAX RETURN—1940

SCHEDULE I—CONTRIBUTIONS

CORN PRODUCTS REFINING COMPANY

Hias Emergency Fund	Brooklyn, N. Y.	$ 15.00
Community Federation of Boston	Boston, Mass.	100.00
Greater New York Fund	New York, N. Y.	2,500.00
Jewish Welfare Fund	Chicago, Ill.	200.00
United Charities	Philadelphia, Pa.	50.00 380
Norfolk Community Fund	Norfolk, Virginia	5.00
American Red Cross	Chicago, Illinois	750.00
American Polish Committee	New York, N. Y.	50.00
American Red Cross	New York, N. Y.	2,000.00
Indianapolis Community Fund	Indianapolis, Indiana	25.00
St. Mary's Hospital	Philadelphia, Pa.	10.00
Portland Community Fund	Portland, Oregon	10.00
Seattle Community Fund	Seattle, Washington	10.00
Spokane Community Fund	Spokane, Washington	5.00
Minneapolis Community Fund	Minneapolis, Minn.	15.00
St. Paul Community Chest	St. Paul, Minn.	10.00
Omaha Community Chest	Omaha, Nebraska	15.00
Salvation Army	Boston, Mass.	10.00 381
Allied Charities	Kansas City, Kansas	175.00
Allied Charities	Kansas City, Mo.	1,000.00
Federation of Jewish Charities	New York, N. Y.	150.00
Assoc. Jewish Philanthropies	Boston, Mass.	100.00
Community Chest	San Francisco, Calif.	50.00
Community Fund	Chicago, Illinois	2,000.00
United Charities Community Chest	St. Louis, Missouri	25.00
TOTAL—as per Item #22, Page 1		$9,280.00

Joint Exhibit 12-H.

382 CORN PRODUCTS REFINING COMPANY AND REFINACOES DE MILHO CONSOLIDATED RETURN
17 BATTERY PLACE NEW YORK, N. Y.

CORPORATION INCOME, DECLARED VALUE EXCESS-PROFITS AND DEFENSE TAX RETURN—1940

SCHEDULE J—DEPRECIATION

	Corn Products Refining Company		
	Plants		
383	Buildings	482,086.95	
	Machinery	925,655.56	
	Furniture and Fixtures	6,319.36	1,414,061.87
	Office furniture and fixtures		12,454.11
	Automobiles		14,903.65
			1,441,419.63
	Refinacoes de Milho		
	Buildings	18,853.28	
	Machinery	48,498.78	
384	Plant furniture and fixtures	391.35	
	Plant automobiles	1,491.51	
	Office furniture and fixtures	1,291.16	
	Office automobiles	386.09	70,912.17
	Total—as per Item #24, page one		1,512,331.80

Joint Exhibit 12-H.

CORN PRODUCTS REFINING COMPANY AND REFINACOES DE MILHO CONSOLIDATED RETURN
CORN PRODUCTS REFINING COMPANY
17 BATTERY PLACE NEW YORK, N. Y.

CORPORATION INCOME DECLARED VALUE EXCESS-PROFITS AND DEFENSE TAX RETURN 1940

SCHEDULE J .. DEPRECIATION
BUILDINGS — 2½%

ARGO

Year Acquired	Cost: New Purchases	Cost: Replacements	Cost: Total Cost	Depreciated To 12/31/39	Undepreciated To 12/31/39	Remaining Life In Years From 12/31/39	Depreciation 1940	Total
3-1-1910	2,659,611.59		2,659,611.59	2,113,021.19	546,590.40	10 1/6	53,763.03	
1910	749,000.97		749,000.97	588,077.47	160,923.50	10 7/12	15,205.38	
1	443,718.15		443,718.15	339,213.42	104,504.73	11½	9,087.36	
2	49,778.41		49,778.41	36,922.94	12,855.47	12½	1,028.43	
3	209,369.13		209,369.13	150,503.59	58,865.54	13½	4,360.41	
4	59,895.38		59,895.38	41,674.44	18,220.94	14½	1,256.61	
5	211,335.54		211,335.54	139,930.44	71,405.10	15½	4,606.78	
6	260,763.99		260,763.99	165,438.95	95,325.04	16½	5,777.27	
7	213,685.81		213,685.81	122,616.39	91,069.42	17½	5,203.96	
8	484,880.67	7,231.63	492,112.30	323,865.44	168,246.86	18½	9,994.42	
9	404,782.80	24,332.73	429,115.53	231,870.55	197,244.98	19½	10,115.13	
1920	1,063,784.09		1,063,784.09	539,363.83	524,420.26	20½	25,581.47	
1	250,606.59		250,606.59	120,879.11	129,727.48	21½	6,033.83	
2	93,971.70		93,971.70	43,006.09	50,965.61	22½	2,265.14	
3	609,246.44		609,246.44	262,726.48	346,519.96	23½	14,745.53	
4	162,971.14		162,971.14	65,682.00	97,289.14	24½	3,970.99	
5	34,520.15		34,520.15	12,935.67	21,584.48	25½	846.45	
6	290,146.70		290,146.70	100,487.45	189,659.25	26½	7,156.95	
7	51,681.28		51,681.28	16,427.22	35,254.06	27½	1,281.96	
8	36,741.02		36,741.02	10,629.31	26,111.71	28½	916.20	
9	24,616.58		24,616.58	6,461.81	18,154.77	29½	615.41	
1930	143,830.34		143,830.34	34,159.72	109,670.62	30½	3,595.76	
1	7,263.73		7,263.73	1,543.52	5,720.21	31½	181.59	
2	1,985.66		1,985.66	372.30	1,613.36	32½	49.64	
3	86,343.26		86,343.26	14,030.77	72,312.49	33½	2,158.58	
4	56,930.25		56,930.25	7,827.93	49,102.32	34½	1,423.26	
5	160,366.21		160,366.21	18,041.22	142,324.99	35½	4,009.16	
6	16,015.70		16,015.70	1,401.37	14,614.33	36½	400.39	
7	20,647.71		20,647.71	1,290.18	19,357.23	37½	516.19	
8	136,054.67		136,054.67	5,102.05	130,952.62	38½	3,401.37	
9	232,392.61	4,052.38	236,444.99	2,955.56	233,489.43	39½	5,911.12	
1940	87,877.17	9,616.29	97,493.46		97,493.46		1,218.67	
	9,314,815.44	45,233.03	9,360,048.47	5,518,458.71	3,841,589.76			205,778.44

EDGEMATER.

5-1-1902	967,050.69		967,050.69	932,262.37	34,788.32	2½	14,969.28	
3	62,918.74		62,918.74	59,358.11	3,560.63	3½	1,017.31	

7	51,681.28		51,681.28	16,427.22	35,254.06	27½	1,284.96	
8	36,741.02		36,741.02	10,629.31	26,111.71	28½	916.20	
9	24,616.58		24,616.58	6,461.81	18,154.77	29½	615.41	
1930	143,830.34		143,830.34	34,159.72	109,670.62	30½	3,595.76	
1	7,263.73		7,263.73	1,543.52	5,720.21	31½	184.59	
2	1,985.66		1,985.66	372.30	1,613.36	32½	49.64	
3	86,343.26		86,343.26	14,030.77	72,312.49	33½	2,158.58	
4	56,930.25		56,930.25	7,827.93	49,102.32	34½	1,423.26	
5	160,366.21		160,366.21	18,041.22	142,324.99	35½	4,009.16	
6	16,015.70		16,015.70	1,461.37	14,614.33	36½	400.39	
7	20,647.71		20,647.71	1,290.48	19,357.23	37½	516.19	
8	136,054.67		136,054.67	5,102.05	130,952.62	38½	3,401.37	
9	282,392.61	4,052.38	236,444.99	2,955.56	233,489.43	39½	5,911.12	
1940	87,877.17	9,616.29	97,493.46		97,493.46		1,218.67	
	9,314,815.44	45,233.03	9,360,048.47	5,518,458.71	3,841,589.76			205,778.44

EDGEWATER

5-1-1902	967,050.69		967,050.69	932,262.37	34,788.32	2⅛	14,909.28	
3	62,918.74		62,918.74	59,358.11	3,560.63	3½	1,017.31	
4	64,217.95		64,217.95	59,385.04	4,832.91	4½	1,073.99	
5	96,096.56		96,096.56	86,998.84	9,097.72	5½	1,654.13	
6	52,959.59		52,959.59	46,884.70	6,074.89	6½	934.59	
7	77,887.29		77,887.29	67,351.96	10,535.33	7½	1,404.72	
8	24,487.66		24,487.66	20,661.14	3,826.52	8½	450.18	
9	630.31		630.31	513.43	116.88	9½	12.31	
1910	8,589.36		8,589.36	6,806.07	1,783.29	10½	169.84	
1	16,165.33		16,165.33	12,447.27	3,718.06	11½	323.31	
3	2,081.33		2,081.33	1,508.15	573.18	13½	42.46	
4	25,032.91		25,032.91	17,531.43	7,501.48	14½	517.35	
5	27,598.61		27,598.61	18,645.30	8,953.31	15½	577.63	
7	19,920.56		19,920.56	11,361.39	8,559.17	17½	489.10	
8	73,634.38	37,935.18	111,569.56	75,249.50	36,320.06	18½	1,963.24	
9	53,705.18	80,001.15	133,706.33	71,876.42	61,829.91	19½	3,170.77	
1920	1,895,904.32		1,895,904.32	1,022,960.71	872,943.61	20½	42,582.61	
1	138,267.59		138,267.59	71,266.30	67,001.29	21½	3,116.34	
2	85,847.68		85,847.68	42,171.06	43,676.62	22½	1,941.18	
3	4,845.25		4,845.25	2,237.97	2,607.28	23½	110.95	
4	18,019.18		18,019.18	7,697.46	10,321.72	24½	421.29	
5	845.99		845.99	331.77	514.22	25½	20.16	
6	8,534.32		8,534.32	3,046.16	5,488.16	26½	207.10	
1930	3,022.16		3,022.16	717.73	2,304.43	30½	75.55	
1	1,908.58		1,908.58	405.54	1,503.04	31½	47.71	
2	1,002.88		1,002.88	188.03	814.85	32½	25.07	
3	113.31		113.31	18.40	94.91	33½	2.83	
4	13,519.82		13,519.82	1,859.00	11,660.82	34½	338.00	
5	40,660.38		40,660.38	4,574.29	36,086.09	35½	1,016.51	
6	53,664.75	9,935.29	63,600.04	5,565.00	58,035.04	36½	1,590.00	
7	7,112.24	6,383.09	13,195.33	843.45	12,651.88	37½	337.38	
8	6.61	160.29	166.90	6.26	160.64	38½	4.17	
9	3,024.33		3,024.33	37.80	2,986.53	39½	73.61	
1940	—	—	—	—	—		—	
	3,849,275.84	134,415.00	3,983,690.84	2,652,768.05	1,330,922.79			80,622.67

Joint Exhibit 12-II.

CORN PRODUCTS REFINING COMPANY & REFINACOES DE MILHO CONSOLIDATED RETURN
CORN PRODUCTS REFINING COMPANY
17 BATTERY PLACE NEW YORK, N. Y.

CORPORATION INCOME DECLARED VALUE EXCESS PROFITS AND DEFENSE TAX RETURN 1940

SCHEDULE J DEPRECIATION
BUILDINGS — 2½%

PEKIN

Year Acquired	Cost: New Purchases	Cost: Replacements	Cost: Total Cost	Depreciated To 12/31/39	Undepreciated To 12/31/39	Remaining Life In Years From 12/31/39	Depreciation 1940	Total
Prior to 1906	457,405.00		457,405.00	499,424.08	42,019.08	—	—	
1906	43,590.00		43,590.00	42,773.43	816.57	6½	125.63	
7	3,950.00		3,950.00	3,831.41	118.59	7½	15.82	
8	58,340.00		58,340.00	55,853.46	2,486.54	8½	292.53	
1912	384,853.08		384,853.08	301,345.72	83,507.36	12½	6,680.59	
3	167,470.10		167,470.10	122,466.56	45,003.54	13½	3,333.60	
4	66,463.28		66,463.28	44,539.48	21,923.80	14½	1,511.98	
5	11,642.34		11,642.34	7,397.61	4,244.73	15½	273.86	
6	212.20		212.20	129.67	82.53	16½	5.00	
7	5,564.73		5,564.73	3,172.05	2,392.68	17½	136.73	
8	20,050.15	346.59	20,396.74	16,840.46	3,556.28	18½	192.23	
9	6,860.73	93.52	6,954.25	3,766.58	3,187.67	19½	163.47	
1920	1,879,841.19		1,879,841.19	953,124.26	926,716.93	20½	45,205.71	
1	277,004.06		277,004.06	133,611.88	143,392.18	21½	6,669.41	
2	1,299.55		1,299.55	594.70	704.85	22½	31.32	
3	444,408.01		444,408.01	191,642.88	252,765.13	23½	10,755.96	
4	90,164.43		90,164.43	36,338.82	53,825.61	24½	2,196.97	
5	118,903.59		118,903.59	44,556.28	74,347.31	25½	2,915.58	
6	16,425.30		16,425.30	5,688.67	10,736.63	26½	405.16	
7	91,297.62		91,297.62	29,019.59	62,278.03	27½	2,264.65	
8	1,019.84		1,019.84	293.03	724.81	28½	25.43	
9	702.43		702.43	184.38	518.05	29½	17.56	
1930	4,333.08		4,333.08	1,029.13	3,303.95	30½	108.33	
1	5,870.65		5,870.65	1,247.54	4,623.11	31½	146.77	
3	1,802.41		1,802.41	292.89	1,509.52	33½	45.06	
4	23,181.57		23,181.57	3,187.47	19,994.10	34½	579.54	
5	49,308.08	88,656.25	137,964.33	15,520.97	122,443.36	35½	3,449.10	
6	45,244.16		45,244.16	3,958.85	41,285.31	36½	1,131.10	
7	26,122.68		26,122.68	1,632.67	24,490.01	37½	653.07	
8	854,391.34	2,538.18	856,929.52	32,134.86	824,794.66	38½	21,423.24	
9	436,839.42	54.29	436,893.71	5,461.17	431,432.54	39½	10,922.34	
1940	108,621.38	5,217.73	113,839.11		113,839.11		1,422.99	
	5,703,182.40	96,906.56	5,800,088.96	2,561,062.55	3,239,026.41			123,100.73

Joint Exhibit 12-II.

CORN PRODUCTS REFINING COMPANY and REFINACOES DE MILHO CONSOLIDATED RETURN
CORN PRODUCTS REFINING COMPANY
17 BATTERY PLACE NEW YORK, N. Y.

CORPORATION INCOME, DECLARED VALUE EXCESS-PROFITS AND DEFENSE TAX RETURN 1940

SCHEDULE J DEPRECIATION
MACHINERY — 6%

Year Acquired	Cost: New Purchases	Cost: Replacements	Cost: Total Cost	Depreciated to Dec. 31, 1939	Undepreciated to Dec. 31, 1939	Remaining Life in years from Dec. 31, 1939	Depreciation 1940	Total
ARGO								
Prior to 1923	9,929,401.51	236,374.88	10,165,776.39	10,165,776.39	—	—	—	
1923	1,432,830.30	97,147.55	1,529,977.85	1,519,557.31	10,420.54	1 1/6	10,420.54	
4	179,462.53	84,811.67	264,274.20	249,848.57	14,425.63	1 1/6	12,364.90	
5	277,525.05	62,406.45	339,931.50	303,058.38	36,873.12	2 1/6	17,018.43	
6	734,411.85	37,083.35	771,495.20	642,156.48	129,338.72	3 1/6	40,843.88	
7	353,567.62	65,397.54	418,965.16	321,130.02	97,835.14	4 1/6	23,480.18	
8	535,644.42	78,389.70	614,034.12	427,608.43	186,425.69	5 1/6	36,082.43	
9	334,075.81	170,117.16	504,192.97	317,641.66	186,551.31	6 1/6	30,251.59	
1930	835,677.83	66,126.48	901,804.31	514,028.61	387,775.70	7 1/6	54,108.28	
1	244,315.21	45,146.86	289,462.07	147,625.69	141,836.38	8 1/6	17,367.73	
2	290,969.69	26,198.71	317,168.40	142,725.82	174,442.58	9 1/6	19,030.11	
3	230,972.13	32,034.04	263,006.17	102,572.41	160,433.76	10 1/6	15,780.37	
4	240,351.98	49,309.59	289,661.57	95,588.30	194,073.27	11 1/6	17,379.69	
5	107,258.57	36,343.59	143,602.16	38,772.58	104,829.58	12 1/6	8,616.13	
6	249,387.90	46,915.61	296,303.51	62,223.74	234,079.77	13 1/6	17,778.21	
7	179,296.84	61,741.51	241,038.35	36,155.75	204,882.60	14 1/6	14,462.30	
8	495,827.45	122,556.04	618,383.49	55,654.51	562,728.98	15 1/6	37,103.01	
9	427,555.84	139,738.03	567,293.87	17,018.82	550,275.05	16 1/6	34,037.63	
1940	759,770.57	180,331.56	940,102.13		940,102.13		28,203.06	
	17,838,303.10	1,638,170.32	19,476,473.42	15,159,143.47	4,317,329.95			434,328.77
EDGEWATER								
Prior to 1923	2,984,504.97	462,823.45	3,447,328.42	3,897,680.04	449,951.62	—	—	
3	70,533.56	40,395.22	110,928.78	110,123.46	805.32	1/6	805.32	
4	8,240.87	22,122.29	30,363.16	28,634.58	1,728.58	1 1/6	1,481.68	
5	15,935.69	29,138.33	45,074.02	40,156.91	4,917.11	2 1/6	2,269.43	
6	67,413.59	15,455.15	82,868.74	68,976.04	13,892.70	3 1/6	4,387.17	
7	37,010.84	29,997.85	67,008.69	51,361.10	15,647.59	4 1/6	3,755.44	
8	102,267.62	16,193.08	118,460.70	82,495.07	35,965.63	5 1/6	6,961.09	
9	71,990.32	15,171.55	87,161.87	54,912.03	32,249.84	6 1/6	5,229.72	
1930	67,169.05	42,773.54	109,942.59	62,667.32	47,275.27	7 1/6	6,596.56	
1	3,848.54	11,566.83	7,718.29	3,936.35	3,781.94	8 1/6	463.10	
2	312,434.26	42,806.04	355,240.30	159,858.22	195,382.08	9 1/6	21,314.43	
3	43,434.91	4,508.94	47,943.85	18,698.10	29,245.75	10 1/6	2,876.63	
4	47,477.59	9,833.53	57,311.12	18,912.68	38,398.44	11 1/6	3,438.67	
5	5,030.13	2,440.59	7,470.72	2,017.08	5,453.64	12 1/6	448.24	
6	71,753.07	2,633.71	74,386.78	15,621.23	58,765.55	13 1/6	4,463.21	
7	116,032.87	14,474.45	130,507.32	19,576.10	110,931.22	14 1/6	7,830.44	
8	51,456.00	38,495.72	89,951.72	8,081.22	81,870.50	15 1/6	5,397.10	
9	28,869.75	40,206.66	69,076.41	2,072.29	67,004.12	16 1/6	4,144.58	
1940	72,638.68	776.03	71,862.65		71,862.65		2,155.88	
	4,025,467.87	841,812.96	4,867,280.83	4,645,779.82	221,501.01			79,706.93

Joint Exhibit 12-H.

CORN PRODUCTS REFINING COMPANY and REFINACOES DE MILHO CONSOLIDATED RETURN

CORN PRODUCTS REFINING COMPANY
17 BATTERY PLACE NEW YORK, N. Y.

CORPORATION INCOME, DECLARED VALUE EXCESS-PROFITS AND DEFENSE TAX RETURN 1940

SCHEDULE J DEPRECIATION
MACHINERY — 6%

Year Acquired	Cost: New Purchases	Cost: Replacements	Cost: Total Cost	Depreciated to Dec. 31, 1939	Undepreciated to Dec. 31, 1939	Remaining Life in years from Dec. 31, 1939	Depreciation 1940	Total
N. KANSAS CITY								
Prior to 1923	2,968,874.95		2,968,874.95	2,968,874.95	—	—		
3	26,665.78	5,341.54	32,007.32	31,765.81	241.51	1 1/6	241.51	
4	4,268.51	15.40	4,283.91	4,034.14	249.77	1 1/6	200.85	
5	10,804.09		10,804.09	9,608.48	1,195.61	2 1/6	551.83	
6	105,934.71	9,463.67	115,398.38	95,429.91	19,968.47	3 1/6	6,305.86	
7	56,657.10	9,538.25	66,195.35	50,366.43	15,828.92	4 1/6	3,798.95	
8	800,791.42	4,999.97	805,791.39	559,835.11	245,956.28	5 1/6	47,604.50	
9	29,929.02	8,341.58	38,270.60	24,110.52	14,160.08	6 1/6	2,296.24	
1930	126,768.07	9,791.88	136,559.95	77,839.20	58,720.75	7 1/6	8,193.60	
1	144,925.94	16,760.60	161,686.54	82,460.12	79,226.42	8 1/6	9,701.19	
2	31,274.44	9,557.00	40,831.44	18,374.17	22,457.27	9 1/6	2,449.89	
3	81,630.27	2,157.96	83,788.23	32,677.39	51,110.84	10 1/6	5,027.29	
4	42,587.12	2,732.94	45,320.06	14,955.60	30,364.46	11 1/6	2,719.20	
5	91,952.88	7,392.35	99,345.23	26,823.20	72,522.03	12 1/6	5,966.71	
6	59,097.09	62,678.10	121,775.19	25,572.79	96,202.40	13 1/6	7,306.51	
7	84,292.11	20,917.96	105,210.07	15,781.50	89,428.57	14 1/6	6,312.60	
8	46,110.35	5,583.35	51,693.70	4,652.43	47,041.27	15 1/6	3,101.62	
9	96,294.63	60,150.10	156,444.73	4,693.34	151,751.39	16 1/6	9,386.68	
1940	321,778.35	101,239.99	423,018.34		423,018.34		12,690.55	
	5,100,491.63	336,631.84	5,437,123.47	4,020,569.85	1,416,553.62			132,344.22
PEKIN								
Prior to 1923	3,915,010.50	175,195.45	4,090,205.95	4,466,038.56	375,832.61		—	
3	626,372.24	20,151.64	646,523.88	642,151.68	4,372.20	1/6	4,372.20	
4	310,881.10	14,330.37	325,211.47	307,977.55	17,233.92	1 1/6	14,772.01	
5	13,236.30	29,684.18	16,447.88	14,590.92	1,856.96	2 1/6	857.08	
6	115,253.98	38,949.13	154,203.11	128,351.47	25,851.64	3 1/6	8,163.70	
7	88,763.13	26,566.75	115,329.88	88,397.43	26,932.45	4 1/6	6,463.79	
8	51,055.15	17,433.36	68,488.51	47,694.83	20,793.68	5 1/6	4,024.58	
9	95,238.31	26,629.54	121,867.85	76,776.74	45,091.11	6 1/6	7,312.07	
1930	21,756.67	14,165.78	35,922.45	20,475.82	15,446.63	7 1/6	2,155.35	
1	25,329.15	20,252.69	45,581.84	23,246.74	22,335.10	8 1/6	2,734.91	
2	8,077.73	16,071.54	24,149.27	10,867.20	13,282.07	9 1/6	1,448.96	
3	51,602.18	9,820.87	61,423.05	23,954.97	37,468.08	10 1/6	3,685.38	
4	306,581.04	13,350.29	319,931.33	105,577.34	214,353.99	11 1/6	19,195.88	
5	92,665.11	28,479.58	121,144.69	32,709.06	88,435.63	12 1/6	7,268.68	
6	66,641.38	36,208.33	102,849.71	21,598.14	81,251.28	13 1/6	6,170.98	
7	67,437.39	75,223.59	142,660.98	21,399.15	121,261.83	14 1/6	8,559.66	
8	1,760,778.04	72,068.46	1,832,846.50	164,956.19	1,667,890.31	15 1/6	109,970.79	
9	943,792.59	78,278.25	1,022,070.84	30,662.13	991,408.71	16 1/6	61,324.25	
1940	302,929.07	56,916.75	359,845.82		359,845.82		10,795.37	
	8,836,928.46	769,776.55	9,606,705.01	6,227,426.21	3,379,278.80			279,275.64
								925,655.56

Joint Exhibit 12-H.

CORN PRODUCTS REFINING COMPANY AND
REFINACOES DE MILHO CONSOLIDATED RETURN

CORN PRODUCTS REFINING COMPANY
17 BATTERY PLACE NEW YORK, N. Y.

CORPORATION INCOME DECLARED VALUE EXCESS-PROFITS AND DEFENSE TAX RETURN—1940

SCHEDULE J DEPRECIATION
OFFICE FURNITURE AND FIXTURES 6⅔%

Year Acquired	Cost	Depreciation to 12/31/39	Undepreciated to 12/31/39	Remaining Life In Years	Depreciation 1940
Prior to 1925	32,220.92	32,220.92	—	—	
1925	6,701.01	6,563.02	137.99	½	137.99
6	6,344.64	5,893.80	450.84	1½	300.53
7	11,233.08	9,762.08	1,471.00	2½	588.40
8	29,139.40	23,374.87	5,764.53	3½	1,647.01
9	14,408.81	10,518.44	3,890.37	4½	864.53
1930	6,947.14	4,541.36	2,405.78	5½	437.41
1	4,883.45	2,803.77	2,079.68	6½	319.95
2	10,247.42	5,123.70	5,123.72	7½	683.16
3	11,213.73	4,859.27	6,354.46	8½	747.58
4	6,860.54	2,515.53	4,345.01	9½	457.37
5	10,369.60	3,110.89	7,258.71	10½	691.31
6	16,287.95	3,800.51	12,487.44	11½	1,085.86
7	20,384.11	3,397.35	16,986.76	12½	1,358.94
8	19,706.31	1,970.64	17,735.67	13½	1,313.76
9	20,076.44	669.22	19,407.22	14½	1,338.43
1940	14,456.39		14,456.39		481.88
	241,480.94	121,125.37	120,355.57		
Total Depreciation Office Furniture and Fixtures					12,454.11
AUTOMOBILES					
1926	3,017.50	2,917.50	100.00	—	
1931	10,096.76	9,393.25	703.51	303.51	
1932	5,048.22	4,848.22	200.00	—	
1933	37,113.03	35,713.03	1,400.00	—	
1934	8,250.77	7,850.77	400.00	—	
1935	10,105.68	8,986.68	1,119.00	619.00	
1936	9,556.24	6,127.24	3,429.00	1,740.00	
1937	19,786.86	9,225.87	10,560.99	3,480.00	
1938	25,220.77	8,903.60	16,317.17	5,142.40	
1939	4,543.85	704.00	3,839.85	1,392.00	
1940	12,647.76	—	12,647.76	1,932.00	
Cars traded 1940	14,173.34	12,467.60	1,705.74	294.74	
	159,560.78	107,137.76	52,423.02		14,903.65
PATENTS					
Oct. 14, 1935	2,500.00	1,465.23	1,034.77	344.76	
July 2, 1935	3,900.00	2,420.64	1,479.36	537.92	
	6,400.00	3,885.87	2,514.13		882.68
					28,240.44

Joint Exhibit 12-H.

CORN PRODUCTS REFINING COMPANY & REFINACOES DE MILHO
CONSOLIDATED RETURN
CORN PRODUCTS REFINING COMPANY
17 BATTERY PLACE NEW YORK, N. Y.

CORPORATION INCOME DECLARED VALUE EXCESS PROFITS AND DEFENSE TAX RETURN 1940

SCHEDULE J DEPRECIATION
FURNITURE & FIXTURES—6⅔%

Year Acquired	Cost	Depreciated To 12/31/39	Undepreciated To 12/31/39	Remaining Life In Years	Depreciation 1940	Total
ARGO						
Prior to 1925	4,817.83	4,817.83	—	—		
1925	1,026.11	1,004.96	21.15	½	21.15	
6	2,531.40	2,351.54	179.86	1½	119.91	
7	1009.79	877.52	132.27	2½	52.89	
8	1,862.55	1,494.06	368.49	3½	105.27	
9	2,963.45	2,163.35	800.10	4½	177.81	
1930	907.44	593.23	314.21	5½	57.14	
1	2,103.37	1,207.65	895.72	6½	137.81	
2	1,044.10	522.07	522.03	7½	69.61	
3	2,074.19	898.82	1,175.37	8½	138.28	
4	4,411.97	1,617.72	2,794.25	9½	294.13	
5	2,286.29	685.89	1,600.40	10½	152.42	
6	927.09	216.33	710.76	11½	61.81	
7	4,934.77	822.45	4,112.32	12½	328.98	
8	6,516.80	651.68	5,865.12	13½	434.45	
9	8,367.61	278.92	8,088.69	14½	557.84	
1940	5,141.40		5,141.40		171.38	
	52,926.16	20,204.02	32,722.14			2,880.88
EDGEWATER						
Prior to 1925	3,753.26	3,753.26	—	—		
1925	16.88	16.51	.37	½	.37	
6	229.77	213.43	16.34	1½	10.88	
7	581.55	505.37	76.18	2½	30.46	
8	947.49	760.02	187.47	3½	53.55	
9	2,890.08	2,109.72	780.36	4½	173.40	
1930	406.73	265.89	140.84	5½	25.61	
1	117.00	67.21	49.79	6½	7.67	
2	530.90	265.43	265.47	7½	35.39	
3	1,651.12	715.46	935.66	8½	110.07	
4	595.05	218.18	376.87	9½	39.67	
5	841.50	252.45	589.05	10½	56.10	
6	1,284.34	299.67	984.67	11½	85.62	
7	1,730.27	288.38	1,441.89	12½	115.35	
8	6,133.67	613.37	5,520.30	13½	408.91	
9	3,184.08	106.14	3,077.94	14½	212.27	
1940	1,494.50		1,494.50		49.82	
	26,388.19	10,450.49	15,937.70			1,415.14

Joint Exhibit 12-II.

No. Kansas City

Prior to 1926	278.00	278.00	- -	—		
1926	607.00	563.85	43.15	1½	28.75	
7	667.20	579.84	87.36	2½	34.95	
8	591.14	474.17	116.97	3½	33.41	
9	761.69	556.02	205.67	4½	45.70	
1930	532.98	348.43	184.55	5½	33.56	
1	182.83	104.98	77.85	6½	11.98	
2	190.96	95.48	95.48	7½	12.73	
3	651.80	282.43	369.37	8½	43.45	
4	1,480.03	542.68	937.35	9½	98.67	
5	332.24	99.67	232.57	10½	22.15	
6	655.73	153.02	502.71	11½	43.72	
7	3,695.10	615.85	3,079.25	12½	246.34	
8	2,164.12	216.41	1,947.71	13½	144.27	
9	1,302.56	43.42	1,259.14	14½	86.84	
1940	495.89		495.89		16.53	
	14,589.27	4,954.25	9,635.02			903.05

Pekin

Prior to 1925	1,803.03	1,803.03	—			
5	824.50	807.53	16.97	½	16.97	
6	794.33	737.85	56.48	1½	37.62	
7	760.93	661.29	99.64	2½	39.86	
8	647.41	519.32	128.09	3½	36.59	
9	71.13	51.94	19.19	4½	4.27	
1930	255.66	167.15	88.51	5½	16.10	
1	459.77	263.95	195.82	6½	30.12	
2	10.80	5.40	5.40	7½	.72	
3	1,317.86	571.09	746.77	8½	87.86	
4	75.01	27.50	47.51	9½	5.00	
5	445.90	133.78	312.12	10½	29.73	
6	2,972.69	693.63	2,279.06	11½	198.18	
7	2,872.07	478.68	2,393.39	12½	191.47	
8	4,248.29	424.83	3,823.46	13½	283.22	
9	665.70	22.19	643.51	14½	44.38	
1940	2,945.92		2,945.92		98.20	
	21,171.00	7,369.16	13,801.84			1,120.29
						6,319.36

NORTH KANSAS CITY

1922	2,181,672.72		2,181,672.72	1,025,386.18	1,156,286.54	22	52,558.48	
3	8,608.40		8,608.40	3,712.28	4,896.12	23½	208.35	
4	63,390.27		63,390.27	25,548.03	37,842.24	24½	1,544.58	
6	1,690.74		1,690.74	585.58	1,105.16	26½	41.71	
8	282,101.70		282,101.70	81,613.12	200,488.58	28½	7,034.69	
9	41.63		41.63	10.92	30.71	29½	1.04	
1930	15,245.79		15,245.79	3,620.90	11,624.89	30½	381.15	
1	21,066.81		21,066.81	4,476.70	16,590.11	31½	526.67	
2	635.66		635.66	119.18	516.48	32½	15.89	
4	22,991.27		22,991.27	3,161.29	19,829.98	34½	574.78	
5	26,217.25		26,217.25	2,949.44	23,267.81	35½	655.43	
6	143,865.67		143,865.67	12,588.24	131,277.43	36½	3,596.64	
7	175,149.17	9,178.75	184,327.92	11,520.50	172,807.42	37½	4,608.20	
8	12,811.54	4.53	12,816.07	480.60	12,335.47	38½	320.40	
9	2,434.19		2,434.19	30.43	2,403.76	39½	60.85	
1940	37,809.77	1,232.64	39,042.41		39,042.41		488.03	
	2,994,461.26	10,415.92	3,004,877.18	1,175,565.03	1,829,312.15			72,585.11
								482,086.95

Joint Exhibit 12-H.

CORN PRODUCTS REFINING COMPANY and REFINACOES DE MILHO CONSOLIDATED RETURN
REFINACOES DE MILHO
CAIXA POSTAL 2972, SAO PAULO, BRAZIL, S. A.

CORPORATION INCOME, DECLARED VALUE EXCESS-PROFITS AND DEFENSE TAX RETURN 1940

SCHEDULE J DEPRECIATION

Acquired	Rs.	Book Cost Rate	$	Adjustment	Depreciable Cost	Depreciation to Dec. 31, 1939	Undepreciated to Dec. 31, 1939	Depreciation 1940	Total
				Buildings 2½%					
Aug. 1, 1930	2,518,693$700	.094555	238,155.08	456,124.12	694,279.20	163,444.90	530,834.30	17,356.98	
1930	9,009$549	.094555	851.90		851.90	196.14	655.76	21.30	
1	12,034$300	.061807	743.80		743.80	158.02	585.78	18.59	
2	230,000$000	.076400	17,572.00		17,572.00	3,294.75	14,277.25	439.30	
6	104,018$170	.059562	6,195.53		6,195.53	542.11	5,653.42	154.89	
7	7,258$757	.059562	432.35		432.35	32.43	399.92	10.81	
7	2,579$832	.052227	134.74		134.74	8.40	126.34	3.36	
8	513,776$936	.058600	30,107.33		30,107.33	1,129.02	28,978.31	752.68	
9	$030	.060580			—	—	—	—	
1940	154,500$000	.060575	9,358.84		9,358.84		9,358.84	116.99	
	3,537,353$700		302,686.87	456,124.12	758,810.99	168,740.91	590,070.08		18,853.28
				Machinery 6%					
Aug. 1, 1930	3,462,180$400	.094555	327,366.47	352,897.34	680,263.81	384,349.07	295,914.74	40,815.83	
1930	22,934$758	.094555	2,168.59		2,168.59	1,198.19	970.40	130.12	
1	49,329$316	.061807	3,048.90		3,048.90	1,554.91	1,493.99	182.93	
2	157,244$732	.076400	12,013.50		12,013.50	5,406.08	6,607.42	720.81	
4	18,000$000	.081825	1,472.85		1,472.85	486.03	986.82	88.37	
5	108,000$000	.055000	5,994.00		5,994.00	1,618.38	4,375.62	359.64	
5	6,284$569	.055000	348.79		348.79	94.18	254.61	20.93	
6	227,589$108	.059562	13,555.66		13,555.66	2,846.69	10,708.97	813.34	
6	40,390$654	.059562	2,405.75		2,405.75	505.22	1,900.53	144.35	
7	7,258$757	.059562	432.35		432.35	77.82	354.53	25.94	
7	102,103$497	.052277	5,337.66		5,337.66	800.65	4,537.01	320.26	
8	782,819$354	.058600	45,873.21		45,873.21	4,128.60	41,744.61	2,752.40	
9	64,705$378	.060580	3,919.85		3,919.85	117.60	3,802.25	235.19	
1940	1,039,300$400	.060575	62,955.62		62,955.62		62,955.62	1,888.67	
	6,088,140$923		486,893.20	352,897.34	839,790.54	403,183.42	436,607.12		48,498.78
				Plant Furniture and Fixtures 10%					
Aug. 1, 1930	25,479$700	.094555	2,409.23	892.76	1,516.47	1,428.04	88.43	88.43	
1930	12,195$450	.094555	1,153.14		1,153.14	1,061.81	91.33	91.33	
1	5,830$000	.061807	360.33		360.33	306.26	54.07	36.03	
2	235$000	.076400	17.95		17.95	13.50	4.45	1.80	
3	630$000	.086062	54.22		54.22	35.23	18.99	5.42	
4	1,923$700	.081825	157.41		157.41	86.57	70.84	15.74	
6	10,186$700	.059562	606.74		606.74	212.34	394.40	60.67	
8	2,370$000	.058600	138.88		138.88	20.82	118.06	13.89	
9	8,181$050	.060580	495.61		495.61	24.78	470.83	49.56	
1940	9,401$900	.060575	569.52		569.52		569.52	28.48	
	76,433$500		5,963.03	892.76	5,070.27	3,189.35	1,880.92		391.35

Joint Exhibit 12-II.

REFINACOES DE MILHO

CAIXA POSTAL #2972, SAO PAULO, BRAZIL, S. A.

CORPORATION INCOME, DECLARED VALUE EXCESS-PROFITS AND DEFENSE TAX RETURN 1940

SCHEDULE J DEPRECIATION

Acquired	Rs.	Book Cost Rate	$	Adjustment	Depreciable Cost	Depreciation to Dec. 31, 1939	Undepreciated to Dec. 31, 1939	Depreciation 1940	Total
					Plant Automobiles 25%				
Aug. 1, 1930	5,889$300	.094555	556.86	143.66	700.52	700.52	—		
1	19,553$143	.061807	1,208.52		1,208.52	1,208.52	—		
2	16,720$700	.076400	1,275.93		1,275.93	1,275.93	—		
3	3,196$000	.086062	275.05		275.05	275.05	—		
4	21,719$300	.081825	1,777.18		1,777.18	1,777.18	—		
5	12,165$000	.055500	675.16		675.16	675.16	—		
6	32,396$857	.059562	1,929.62		1,929.62	1,688.40	241.22	241.22	
7	10,937$500	.052277	571.88		571.88	357.43	214.45	142.97	
8	15,415$800	.058600	903.37		903.37	338.77	564.60	225.84	
9	58,202$400	.060580	3,525.90		3,525.90	440.74	3,085.16	881.48	
1940	—		—		—	—	—	—	
	189,804$000		12,149.37	143.66	12,293.03	8,187.60	4,105.43		1,491.51
					Office Furniture and Fixtures 10%				
1930	53,132$900	.094555	5,023.98		5,023.98	4,626.27	397.71	397.71	
1	27,512$700	.061809	1,700.48		1,700.48	1,445.42	255.06	170.05	
2	6,810$342	.076400	520.31		520.31	390.23	130.08	52.03	
3	13,528$479	.086062	1,164.29		1,164.29	756.79	407.50	116.43	
4	8,531$800	.081825	698.11		698.11	383.96	314.15	69.81	
5	12,691$500	.055500	704.38		704.38	316.98	387.40	70.44	
6	5,552$600	.059562	330.72		330.72	99.22	231.50	33.07	
7	16,922$463	.052277	884.66		884.66	221.17	663.49	88.47	
8	42,474$200	.058600	2,488.99		2,488.99	373.35	2,115.64	248.90	
9	9,426$300	.060580	571.05		571.05	28.55	542.50	57.11	
1940	30,112$700	.060575	1,824.08		1,824.08		1,824.08	91.20	
	213,075$300		14,870.43		14,870.43	7,861.48	7,008.95		1,291.16
					Office Automobiles 25%				
1940	50,990$000	.060575	3,088.72		3,088.72		3,088.72	386.09	
									386.09
									70,912.17

Joint Exhibit 12-H.

412 CORN PRODUCTS REFINING COMPANY AND REFINAÇOES DE MILHO CONSOLIDATED RETURN
17 Battery Place New York, N. Y.

CORPORATION INCOME, DECLARED VALUE EXCESS-PROFITS AND DEFENSE TAX RETURN 1940

SCHEDULE K — OTHER DEDUCTIONS

CORN PRODUCTS REFINING COMPANY

	ADMINISTRATIVE AND GENERAL EXPENSES		
	Patents and trademarks	67,074.39	
	Unclaimed wages	2.80	
	Pension insurance	371,466.80	
413	Exchange and collection	248.32	
	Foreign general expense	151,051.06	
	General expense	245,256.08	
	Group insurance	106,700.01	
	Insurance	134,511.40	
	Legal expense	72,573.70	
	Edgewater liquidation account	222,117.60	
	Demurrage	1,071.40	
	Office expense—sundry branches	204,793.72	1,576,867.28
	SELLING EXPENSES		
	General selling expense	4,569.43	
	Storage and handling	68,822.71	
	Commission and brokerage	49,294.60	
414	Advertising budget	21,515.79	144,202.53
	TOTAL		1,721,069.81

REFINAÇOES DE MILHO

	SELLING EXPENSES		
	Commission and brokerage	234,264.15	
	General selling expense	1,302.07	
	Advertising	42,579.17	
	Service and development	2,244.55	
	Samples	660.33	281,050.27

Joint Exhibit 12-H.

ADMINISTRATIVE AND GENERAL EXPENSES			415
Insurance	6,530.14		
Office expense	12,868.07		
Traveling expense	13,008.45		
General expense	7,459.08		
Exchange and collection	2,910.02		
Bank charges	726.42		
Foreign exchange	6,849.39		
Trademarks	1,978.99		
Legal and auditing expense	710.96		
Pension Fund	661.53	53,703.05	
TOTAL		334,753.32	
TOTAL—as per line 28, page one		2,055,823.13	416

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Joint Exhibit 12-H.

CORN PRODUCTS REFINING COMPANY and REFINACOES DE MILHO CONSOLIDATED RETURN 1940

CORN PRODUCTS REFINING COMPANY
17 Battery Place New York, N. Y.

CORPORATION INCOME, DECLARED VALUE EXCESS-PROFITS, AND DEFENSE TAX RETURN 1940

SCHEDULE — BALANCE SHEETS

Assets	December 31, 1939		December 31, 1940	
Property and Plant				
Real estate, plants, machinery, etc.	71,218,171.89		62,944,216.20	
Less: Depreciation Reserve	35,314,860.92	35,903,310.97	29,168,198.90	33,776,017.30
Investments				
Stocks and notes of subsidiary and affiliated companies at cost or less	31,047,160.74		30,743,677.57	
Other investments, including mortgages, at cost or less	1,619,852.25	32,667,012.99	1,146,245.69	31,889,923.26
Current Assets				
Cash in bonds and on hand	15,281,844.17		17,078,133.07	
Marketable securities	5,577,262.13		5,263,848.83	
Interest accrued on securities	14,082.52		16,154.86	
Notes receivable and accounts receivable	344,011.18		123,011.88	
Due from subsidiary and controlled companies	14,301,403.94		13,760,429.29	
Inventories, at the lower of cost or market, finished products, materials and supplies	7,527,720.34	43,046,324.28	7,593,823.61	43,835,401.54
Deferred Assets and Charges				
Prepaid insurance, other expenses, and unadjusted accounts	966,668.45		945,593.65	
Notes and accounts receivable, not current	1,275,716.52			
Foreign deposits, securities, and amounts due from foreign subsidiary and affiliated companies, subject to exchange restrictions	1,334,646.84	3,577,031.81	1,239,175.84	2,184,769.49
Treasury Stock				
4,262 Shares preferred at cost		469,856.25		469,856.25
		115,663,536.30		112,155,967.84
Liabilities, Capital Stock and Surplus				
Capital Stock				
Preferred stock— 250,000 shares @ $100.00	25,000,000.00		25,000,000.00	
Common stock —2,530,000 shares @ $25.00	63,250,000.00	88,250,000.00	63,250,000.00	88,250,000.00
Current Liabilities				
Accounts payable	1,810,641.22		1,216,309.59	
Dividend on preferred and common stock, payable in January	2,327,541.50		2,327,541.50	
Due to subsidiary and affiliated companies	541,819.58		531,312.69	
Federal income and other corporate taxes	3,231,814.59	7,911,816.89	3,386,849.51	7,462,018.29
Deferred Credits to Income		1,671,383.40		
Reserves				
For possible loss on miscellaneous investments	100,000.00		0	
For contingencies	—		200,000.00	
For merchandise inventories	316,759.42		924,164.69	
For depreciation of marketable securities	838,521.75	1,255,281.17	478,566.36	1,602,731.05
Surplus—Earned		16,575,054.84		14,841,223.50
		115,663,536.30		112,155,967.84

Joint Exhibit 12-H.

CORN PRODUCTS REFINING COMPANY AND REFINACOES DE MILHO CONSOLIDATED RETURN

REFINACOES DE MILHO

17 BATTERY PLACE . NEW YORK, N. Y.

CORPORATION INCOME, DECLARED VALUE EXCESS PROFITS, AND DEFENSE TAX RETURN 1940

SCHEDULE — BALANCE SHEETS

ASSETS	DECEMBER 31, 1939		DECEMBER 31, 1940	
FIXED ASSETS				
Real Estate, Plant and Equipment	584,542.04		712,120.54	
Less: Depreciation Reserve	363,612.91	220,929.40	376,238.04	335,882.50
Office Furniture and Fixtures	12,465.10		15,995.76	
Less: Depreciation Reserve	7,745.76	4,719.34	8,496.29	7,499.47
Total Fixed Assets less Depreciation Reserve		225,648.44		343,381.97
Trademark, Patents and Goodwill		9,813.96		8,117.05
Deposits in Guarantee				1,621.41
Current Assets				
Cash in Banks and on Hand	85,320.81		31,621.56	
Accounts and Notes Receivable less Reserve for Bad Debts	190,956.81		122,612.32	
Investments	4,629.22			
Inventories	367,033.90		537,498.30	
Merchandise in Transit			1,698.43	
Bill Stamps	550.23		1,142.34	
Other Current Assets	17,435.35		13,677.37	
Total Current Assets		665,926.32		708,250.32
Deferred Charges		12,147.48		9,649.17
TOTAL ASSETS		913,536.20		1,071,019.92
Deficit		34,701.22		12,706.74
		948,237.42		1,083,726.66
LIABILITIES				
Capital				
Head Office Capital Account		50,929.61		50,925.40
Plant and Working Fund Account		345,897.71		345,769.18
Current Liabilities				
Affiliated Companies	500,353.71		618,326.33	
Suspense	620.30			
Other Current Liabilities	41,353.49		57,386.25	
Total Current Liabilities		542,327.50		675,712.58
Reserves				
Reserve for Taxes	3,124.60		2,233.25	
Reserve for Employees Compensation on Dismissal	6,058.00		9,086.25	
Total Reserves		9,182.60		11,319.50
TOTAL LIABILITIES		948,237.42		1,083,726.66

Joint Exhibit 12-H.

124 CORN PRODUCTS REFINING COMPANY AND REFINACOES DE MILHO CONSOLIDATED RETURN

17 Battery Place New York, N. Y.

CORPORATION INCOME DECLARED VALUE EXCESS-PROFITS AND DEFENSE TAX RETURN FOR THE CALENDAR YEAR 1940

SCHEDULE M—RECONCILIATION OF NET INCOME AND ANALYSIS OF EARNED SURPLUS AND UNDIVIDED PROFITS

	Corn Products Refining Co.	Refinacoes De Milho
1. Total distribution to stockholders charged to earned surplus during the year	9,310,166.00	
3. Federal Income Taxes	2,441,213.34	
7. Additions to surplus reserves		
125 (a) Inventory adjustment	741,110.84	
(b) Reserve for contingencies	100,000.00	
8. Other unallowable deductions		
(a) Building charge-off	4,000.00	
(b) Developments and experiments	47,647.17	
(d) Research and development—Santo Domingo	49,355.39	
(e) Reserve for dismissal of employees		3,028.75
(f) Organization expense		3,785.94
(g) Reserve Brazilian income tax		1,444.95
9. Adjustments not recorded on books		
(a) German interest in Blocked Income from Affiliated Companies	6,320.28	
(b) Foreign dividends in Blocked Income from Affiliated Companies	101,399.42	
(c) Foreign dividends in Deferred Income	106,582.39	
(d) Foreign dividends in 1941 Income from Affiliated Companies	150,750.00	
126 (e) Royalties in Deferred Income	343,715.55	
(f) Royalties in 1941 Income from Affiliated Companies	223.31	
(g) Allowance adjustment for 1940, recorded 1941	2,631.83	
(h) Interest credited to investment account	358.00	
(i) Portion of foreign exchange considered short term capital loss	562,683.20	
(j) Foreign exchange loss on sale of Lira not used on return	314,241.72	
(k) Long term capital gain on sale and release of Lira and Marks	918,344.05	
10. Sundry debit to Earned Surplus re Edgewater Plant	2,000,268.57	
11. Earned surplus and undivided profits at close of the taxable year	14,841,223.50	12,706.74
	31,741,787.94	4,447.10

Joint Exhibit 12-H.

	Corn Products Refining Co.	Refinacoes De Milho
13. Earned surplus and undivided profits at close of the preceding taxable year	16,575,054.84	34,698.35
14. Adjusted net income	8,768,903.79	26,176.86
15. Nontaxable and partially exempt income:		
(a) Interest on		
(1) Obligations of a State, Territory or political subdivision thereof, or the district of Columbia, or United States possessions	624.56	
(2) Obligations of the United States issued on or before Sept. 1, 1917, Treasury notes, Treasury bills, and Treasury Certificates of Indebtedness	947.90	
(3) United States savings bonds and Treasury bonds owned in the principal amount of $5,000 or less	77.34	
(4) United States Savings Bonds and Treasury Bonds owned in the principal amount of over $5,000	2,629.69	
(5) Obligations of instrumentalities of the United States	45.21	
(b) Other Non-taxable income:		
(1) Adjustment of building charge-off	3.55	
16. Charges against surplus reserves		
(a) Additional compensation	293,497.00	
(b) Reserve decrease for elimination of inter-company profit	82,294.03	
17. Adjustments not recorded on the books		
(a) Income from Affiliated Company items accrued in prior years	2,160,743.91	
(b) Foreign dividend accrued in prior year—Interest & Dividend Account	111,986.58	
(c) Capital loss	3,227,842.68	
(d) Patent amortization	882.68	
(e) Inventory adjustment credited to Profit and Loss	162,671.10	
(f) Credit to Merchandise Account in 1940 reversing 1939 debit not used on 1939 return	156,956.07	
(g) German foreign purchase and sale item accrued 1939	12,634.41	
(h) Foreign exchange loss not recorded on the books	167,310.00	
(i) Allowance adjustment accrued in 1939	2,803.80	
(j) Reversal of 1939 foreign exchange adjustment—not used in 1939	1,859.99	
(k) Foreign general expense adjustment accrued in 1939	12,018.81	
(l) Additional allowable depreciation		56,417.93
(m) Reduction in current asset value		10.18
	31,741,787.94	4,447.10

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Exhibit 12-H.

430 CORN PRODUCTS REFINING COMPANY AND REFINACOES DE MILHO CONSOLIDATED RETURN

17 BATTERY PLACE NEW YORK, N. Y.

CORPORATION INCOME, DECLARED VALUE EXCESS-PROFITS AND DEFENSE TAX RETURN—1940

SCHEDULE O—OTHER INCOME

Corn Products Refining Company

Miscellaneous allowances	32,767.53	
Commissions on Corn purchased	1,634.67	
Foreign purchase and sale	44,200.72	
Operation W. 5th Ave. Property	611.52	79,214.44

431 *Refinacoes de Milho*

Sale of corn bags	8,336.36	
Sundry income	14.42	
Reduction in value of net current assets	10.18	8,340.60
Total—as per Item #13—page 1		87,555.04

STATEMENT IN SUPPORT OF CREDIT CLAIMED ON CORPORATION INCOME TAX RETURN FOR TAXES PAID OR ACCRUED TO A FOREIGN COUNTRY OR A POSSESSION OF THE UNITED STATES

432 To Be Filed by a Domestic Corporation

For Calendar Year 1940

Name of Corporation Corn Products Refining Company

Address 17 Battery Place, New York, New York

Claim for credit is made by the domestic corporation named above, on the attached corporation income tax return, which is based on income accrued for the taxable year begun January 1, 1940, and ended December 31, 1940, for taxes accrued, as follows:

I. Normal-tax net income from all sources (computed without any deductions for any income, war-profits, and excess-profits taxes paid to foreign countries)		$7,726,586.25
Total United States income tax on Item I		1,854,380.70

Exhibit 12-H.

SCHEDULE A—Taxes Paid or Accrued During the Taxable Year to a Possession of the United States or a foreign Country 433

Schedule Attached

SUMMARY OF INCOME RECEIVED AND TAXES PAID, AS SHOWN IN SCHEDULE (OR SCHEDULES) A

Schedule A, Item 3 Schedule Attached

Schedule A, Item 9 Schedule Attached

I.	Total net income from sources without United States (computed without deductions for any income and profits taxes imposed by any foreign country or possession of United States) (total of Column A)	$1,254,188.37	434
II.	Total taxes paid or accrued to foreign countries or possessions of United States as separately limited (total of Column B)	$ 252,218.66	
III.	Normal-tax net income from all sources (computed without deductions for any income and profits taxes paid or accrued to foreign countries or possessions of United States) (same as Item I, page 1)	$7,726,586.25	
IV.	Ratio of income from sources without United States to normal-tax net income from all sources (Item I divided by Item III)	16.232115%	
V.	Total United States income tax on Item III (same as Item II, page 1)	$1,854,380.70	435
VI.	Amount of tax which may be claimed as a credit on attached corporation income tax return (Item V multiplied by Item IV, or Item II, whichever amount is the smaller)	$ 252,218.66	

Exhibit 12-H.

CORN PRODUCTS REFINING COMPANY AND REFINACOES DE MILHO CONSOLIDATED RETURN
17 BATTERY PLACE NEW YORK, N. Y.

CORPORATION INCOME, DECLARED VALUE EXCESS-PROFITS AND DEFENSE TAX RETURN 1940

CORN PRODUCTS REFINING COMPANY
COMPUTATION OF FOREIGN TAX CREDIT UNDER SECTION 131 (a) and 131 (f)

	Dividend Foreign Currency	Dividend	% of Gross Income Positive Items (1) 3,721,987.88	Foreign Expenses (2) 297,982.27	Net Dividend Income	Limitation 131 (f) Net Income (3) 7,726,586.25	Limitation 131 (f) U. S. Tax (4) 1,854,380.70	Deemed Per Schedule	Credit Allowable		131 (a) Foreign Currency	131 (a) Rate	131 (a) Dollars
						%							
Argentina—Refinerias de Mais, S.R.L.	650,000.00	153,400.00	4.121453	12,281.20	141,118.80	1.826406	33,868.52	—	—	Arg. Peso	34,423.30	.2360	8,123.90
Brazil—Maizena Brasil, S.A.	2,100,000.00	101,448.93	2.725665	8,122.00	93,326.93	1.207868	22,398.47	5,818.84	5,818.84	Milreis	168:000$000	20$700	8,115.93
Canada—The Canada Starch Company, Ltd.	92,690.50	83,504.87	2.243556	6,685.40	76,819.47	.994223	18,436.68	21,901.63	18,436.68	Canadian $	4,634.53	.90090	4,175.25
	19,155.00	17,256.74	.463643	1,381.57	15,875.17	.205462	3,810.05	5,697.63	3,810.05		957.75	.90089	862.83
	19,155.00	17,256.74	.463643	1,381.57	15,875.17	.205462	3,810.05	5,697.63	3,810.05		957.75	.900997	862.93
	92,690.50	83,504.87	2.243556	6,685.40	76,819.47	.994223	18,436.68	27,570.65	18,436.68		4,634.53	.90090	4,175.25
		201,523.22							44,493.46		11,184.56		10,076.26
Egypt—Corn Products Company, S.A.	1,250.00	5,133.46	.137923	410.99	4,722.47	.061120	1,133.40	—	—	Eg. b	100.00	4.1068	410.68
England—Corn Products Company, Ltd.	65,625.00	256,757.81	6.898405	20,556.02	236,201.79	3.057001	56,688.44	73,212.11	56,688.44		—		—
	50,000.00	174,312.50	4.683317	13,955.45	160,357.05	2.075393	38,485.69	57,419.41	38,485.69		—		—
	37,500.00	150,750.00	4.050255	12,069.04	138,680.96	1.794854	33,283.43	63,518.29	33,283.43		—		—
		581,820.31							128,457.56				
Germany—Deutsche Maizena Werke A.G.	420,000.00	40,320.00	1.083292	3,228.02	37,091.98	.480056	8,902.07	21,273.67	8,902.07	Marks	42,000.00	.096	4,032.00
Deutsche Maizena Gesellschaft m.b.H.	420,000.00	40,320.00	1.083292	3,228.02	37,091.98	.480056	8,902.07	17,023.86	8,902.07		42,000.00	.096	4,032.00
Maizenahaus Gesellschaft m.b.H.	60,000.00	5,760.00	.154756	461.15	5,298.85	.068579	1,271.72	1,607.10	1,271.72		6,000.00	.096	576.00
Mondamin Gesellschaft m.b.H.	36,000.00	3,456.00	.092854	276.69	3,179.31	.041148	763.04	1,405.03	763.04		3,600.00	.096	345.60
Transport und Lagerhaus Gesellschaft m.b.H.	58,500.00	5,616.00	.150887	449.62	5,166.38	.066865	1,239.93	1,918.81	1,239.93		5,850.00	.096	561.60
Finkenheerder Obstwerke R.S.,A.G.	10,800.00	1,036.80	.027856	83.01	953.79	.012344	228.90	—	—		1,080.00	.096	103.68
C. H. Knerr A. G.	50,944.00	4,890.62	.131398	391.54	4,499.08	.058229	1,079.79	—	—		5,094.40	.096	489.06
		101,399.42							21,078.83		105,624.00		10,139.94
Holland—N.V. Corn Products Company	155,964.00	82,511.01	2.216853	6,605.83	75,905.18	.982390	18,217.25	4,354.11	4,354.11		—		—
N.V. Stijfeel en Glucose Fabriek	323,400.00	171,678.83	4.612557	13,744.60	157,934.23	2.044036	37,904.21	5,547.84	5,547.84		—		—
	207,900.00	110,584.92	2.971125	8,853.43	101,731.49	1.316642	24,415.56	5,475.44	5,475.44				
		364,774.76							15,377.39				
India—Corn Products Company, Ltd.	50,000.00	14,903.15	.400408	1,193.14	13,710.01	.177439	3,290.39	7,052.75	3,290.39		—		—
Japan—Nippon Kukusan Kegye Kabushiki Kaisha	722,000.00	169,191.67	4.545734	13,545.48	155,646.19	2.014424	37,355.09	50,774.34	37,355.09	Yen	76,906.40	.234448	18,030.59
Switzerland—Corn Products Company, Ltd.	12,000.00	2,724.18	.073192	218.10	2,506.08	.032435	601.47	1,307.87	601.47	Sw. Fe.	720.00	.227015	163.45
Yugoslavia—A.D.Za Preradu Kukuruza	506,000.00	4,731.46	.127122	378.80	4,352.66	.056334	1,044.65	2,365.73	1,044.65	Dinar	106,260.00	.0093507	993.61
		1,701,050.56	45.702742	136,186.07	1,564,864.49	20.252989	375,567.55	380,942.74	257,517.68				56,054.36

(1) As per total gross income on 131 (b) (1) schedule

(2) Ratable expenses (from 131 (b) (1) schedule) 146,931.21
Foreign general expense (as adjusted) 151,051.06
297,982.27

(3) Corn Products Refining Company normal tax net income

(4) Corn Products Refining Company (before consolidation) total income and income defense tax

CORN PRODUCTS REFINING COMPANY AND REFINACOES DE MILHO CONSOLIDATED RETURN
17 BATTERY PLACE NEW YORK, N. Y.

CORPORATION INCOME, DECLARED VALUE EXCESS-PROFITS AND DEFENSE TAX RETURN 1940

CORN PRODUCTS REFINING COMPANY
COMPUTATION OF FOREIGN TAX CREDIT UNDER SECTION 131 (a) and 131 (f)

	Dividend Foreign Currency	Dividend	% of Gross Income Positive Items (1) 3,721,987.88	Foreign Expenses (2) 297,982.27	Net Dividend Income	Limitation 131 (f) Net Income (3) 7,726,586.25	Limitation 131 (f) U. S. Tax (4) 1,854,380.70	Deemed Per Schedule	Credit Allowable		131 (a) Foreign Currency	131 (a) Rate	131 (a) Dollars
						%							
Argentina—Refinerias de Mais, S.R.L.	650,000.00	153,400.00	4.121453	12,281.20	141,118.80	1.826406	33,868.52	—	—	Arg. Peso	34,423.30	.2360	8,123.90
Brazil—Maizena Brasil, S.A.	2,100,000.00	101,448.93	2.725665	8,122.00	93,326.93	1.207868	22,398.47	5,818.84	5,818.84	Milreis	168:000$000	20$700	8,115.93
Canada—The Canada Starch Company, Ltd.	92,690.50	83,504.87	2.243556	6,685.40	76,819.47	.994223	18,436.68	21,901.63	18,436.68	Canadian $	4,634.53	.90090	4,175.25
	19,155.00	17,256.74	.463643	1,381.57	15,875.17	.205462	3,810.05	5,697.63	3,810.05		957.75	.90089	862.83
	19,155.00	17,256.74	.463643	1,381.57	15,875.17	.205462	3,810.05	5,697.63	3,810.05		957.75	.900997	862.93
	92,690.50	83,504.87	2.243556	6,685.40	76,819.47	.994223	18,436.68	27,570.65	18,436.68		4,634.53	.90090	4,175.25
		201,523.22							44,493.46		11,184.56		10,076.26
Egypt—Corn Products Company, S.A.	1,250.00	5,133.46	.137923	410.99	4,722.47	.061120	1,133.40	—	—	Eg. b	100.00	4.1068	410.68
England—Corn Products Company, Ltd.	65,625.00	256,757.81	6.898405	20,556.02	236,201.79	3.057001	56,688.44	73,212.11	56,688.44		—		—
	50,000.00	174,312.50	4.683317	13,955.45	160,357.05	2.075393	38,485.69	57,419.41	38,485.69		—		—
	37,500.00	150,750.00	4.050255	12,069.04	138,680.96	1.794854	33,283.43	63,518.29	33,283.43		—		—
		581,820.31							128,457.56				
Germany—Deutsche Maizena Werke A.G.	420,000.00	40,320.00	1.083292	3,228.02	37,091.98	.480056	8,902.07	21,273.67	8,902.07	Marks	42,000.00	.096	4,032.00
Deutsche Maizena Gesellschaft m.b.H.	420,000.00	40,320.00	1.083292	3,228.02	37,091.98	.480056	8,902.07	17,023.86	8,902.07		42,000.00	.096	4,032.00
Maizenahaus Gesellschaft m.b.H.	60,000.00	5,760.00	.154756	461.15	5,298.85	.068579	1,271.72	1,607.10	1,271.72		6,000.00	.096	576.00
Mondamin Gesellschaft m.b.H.	36,000.00	3,456.00	.092854	276.69	3,179.31	.041148	763.04	1,405.03	763.04		3,600.00	.096	345.60
Transport und Lagerhaus Gesellschaft m.b.H.	58,500.00	5,616.00	.150887	449.62	5,166.38	.066865	1,239.93	1,918.81	1,239.93		5,850.00	.096	561.60
Finkenheerder Obstwerke R.S.,A.G.	10,800.00	1,036.80	.027856	83.01	953.79	.012344	228.90	—	—		1,080.00	.096	103.68
C. H. Knerr A. G.	50,944.00	4,890.62	.131398	391.54	4,499.08	.058229	1,079.79	—	—		5,094.40	.096	489.06
		101,399.42							21,078.83		105,624.00		10,139.94
Holland—N.V. Corn Products Company	155,964.00	82,511.01	2.216853	6,605.83	75,905.18	.982390	18,217.25	4,354.11	4,354.11		—		—
N.V. Stijfeel en Glucose Fabriek	323,400.00	171,678.83	4.612557	13,744.60	157,934.23	2.044036	37,904.21	5,547.84	5,547.84		—		—
	207,900.00	110,584.92	2.971125	8,853.43	101,731.49	1.316642	24,415.56	5,475.44	5,475.44				
		364,774.76							15,377.39				
India—Corn Products Company, Ltd.	50,000.00	14,903.15	.400408	1,193.14	13,710.01	.177439	3,290.39	7,052.75	3,290.39		—		—
Japan—Nippon Kukusan Kegye Kabushiki Kaisha	722,000.00	169,191.67	4.545734	13,545.48	155,646.19	2.014424	37,355.09	50,774.34	37,355.09	Yen	76,906.40	.234448	18,030.59
Switzerland—Corn Products Company, Ltd.	12,000.00	2,724.18	.073192	218.10	2,506.08	.032435	601.47	1,307.87	601.47	Sw. Fe.	720.00	.227015	163.45
Yugoslavia—A.D.Za Preradu Kukuruza	506,000.00	4,731.46	.127122	378.80	4,352.66	.056334	1,044.65	2,365.73	1,044.65	Dinar	106,260.00	.0093507	993.61
		1,701,050.56	45.702742	136,186.07	1,564,864.49	20.252989	375,567.55	380,942.74	257,517.68				56,054.36

Exhibit 12-H.

AFFILIATIONS SCHEDULE

To be filed with each Consolidated Income Tax Return of Railroad Corporations or Pan-American Trade Corporations (see Section 23.12 of Regulations 104)

TAXABLE YEAR ENDED December 31, 1940

Common parent corporation Corn Products Refining Company.

Address 17 Battery Place, New York, N. Y.

An affiliated group of railroad corporations, within the meaning of section 141 of the Internal Revenue Code, is formed at the time that the common parent corporation becomes the owner directly of at least 95 percent of the stock (not including nonvoting stock which is limited and preferred as to dividends) of another corporation. A corporation becomes a member of such an affiliated group at the time that one or more members of such group becomes the owners directly of at least 95 percent of its stock. A corporation ceases to be a member of such an affiliated group at the time that the aggregate of its stock owned directly by the members of such group becomes less than 95 percent. See section 141 of the Internal Revenue Code and sections of Regulations 103 pertaining thereto.

A Pan-American affiliated group of corporations, within the meaning of section 152 of the Internal Revenue Code, is formed at the time that the common parent corporation satisfying the conditions imposed by such section becomes the owner directly of 100 percent of the capital stock of another corporation satisfying the conditions imposed by such section. A corporation satisfying the conditions so imposed becomes a member of a Pan-American affiliated group at the time that the common parent corporation becomes the owner directly of 100 per cent of its capital stock. A corporation ceases to be a member of a Pan-American affiliated group at the time that some portion of its capital stock ceases to be owned directly by the common parent corporation, or as of the first day of the taxable year during which such corporation ceases to satisfy the conditions made essential to its classification by section 152. See section 152 of the Internal Revenue Code and sections of Regulations 103 pertaining thereto.

No.	Name and Address of Corporation	Date of Incorporation	State or Country in which Incorporated	Capital Stock Outstanding at Beginning of Year			Stock Holdings at Beginning of Year		
					Par Value				Owned by Corporation Number—
					Per Share	Total	Number of Shares	Per Cent	
	Common parent corporation:								
1	Corn Products Refining Company	2-6-1906	Com N. J. Pfd		$25. 100.	63,250,000.00 25,000,000.00			
	Subsidiary corporation:								
2	Refinacoes de Milho	11-16-26	N. J.		100.	100,000.00	1,000	100	1

Exhibit 12-H.

CORN PRODUCTS REFINING COMPANY AND REFINACOES DE MILHO CONSOLIDATED I
17 BATTERY PLACE, NEW YORK, N. Y.

CORPORATION INCOME DECLARED VALUE EXCESS-PROFITS AND DEFENSE TAX RETU

CORN PRODUCTS REFINING COMPANY
COMPUTATION OF FOREIGN TAX CREDIT UNDER SECTION 131 (b) (1)

	Dividends	Royalties	Interest	Purchase and Sale	Cap. Gain	Other Income	Gross Income	Foreign Exchange Dr. Cr.	A Revised Foreign Gross Income	Adjustment for ratable expenses Red Figures	Total Gross Income	%	B $	C Foreign General Expense	Pension Insurance
Argentina	153,400.00	19,211.50		16,135.02			188,746.52	12,384.62	176,361.90	12,384.62	188,746.52	5.071121	7,451.06	2,780.56	
Australia														107.12	
Austria															
Belgium								444.76	444.76	444.76				134.74	Figures not available at time of filing return
Brazil	101,448.93			4,197.84		14,805.49	120,452.26	22,184.79	98,267.47	22,184.79	120,452.26	3.230235	4,755.04	3,407.55	
Canada	201,523.22		786.80	75.46		*25,714.22	233,085.07	.08	233,085.15		233,085.15	6.278503	9,225.08	253.44	
Canary Islands						5,585.37									
China								2,867.63	2,867.63	2,867.63				4,986.06	
Colombia		8,826.20					8,826.20	13.25	8,812.95	13.25	8,826.20	.237137	348.43	1,116.45	
Cuba								2,464.74	2,464.74	2,464.74				19.60	
Czechoslovakia						1,900.00	1,900.00	104.32	2,004.32		2,004.32	.053851	79.12	8.67	
Denmark								755.42	755.42	755.42				4.17	
Dominican Republic															
Dutch East Indies															
Egypt	5,133.46					1,403.00	6,598.46	4.46	6,594.00	4.16	6,598.46	.177283	200.48	201.10	
England	581,820.31	1,672.95	2,350.59			2,280.00	588,123.85	11,998.33	576,125.52	11,998.33	588,123.85	15.801337	23,247.10	22,151.28	
France				1,875.00			1,875.00	14,223.39	12,348.39	14,223.39		.050376	74.02	23,545.08	
Germany	101,390.42	334,889.32	30,523.52	10,963.99	1,344,417.25		1,828,225.53	2,084,072.11	255,846.58	2,084,072.11	1,828,225.53	49.119546	72,171.94	14,721.54	
Greece															
Holland	364,774.76		9.76	2.68			364,787.20	3,106.13	367,893.33		367,893.33	9.883824	14,523.16	673.65	
Hungary															
India	14,903.15		7.83			1,091.94	16,002.92	9,277.88	25,280.80		25,280.80	.679228	998.00	931.19	
Italy			20.71	7.65	130,610.00		130,623.06	11,998.33	116,624.73	116.51	130,623.06	3.670741	5,393.41	23,351.61	
Japan	169,191.67		543.21	4,928.38			174,663.26	302.74	174,360.52		174,663.26	4.690875	6,907.05	117,977.76	
Mexico		18,672.84	7,141.16			4,666.66	30,480.66	84.64	30,565.30		30,565.30	.821209	1,208.61	5,143.90	
Netherlands East Indies								1,319.23	1,319.23	1,319.23				11.46	
New Zealand								1,908.50	1,908.50	1,908.50					
Nicaragua															
Others			2.38				2.38	3,093.44	3,091.06	3,093.44	2.38	.000064	.09	17,758.56	
Philippine Islands														6,667.88	
Poland															
Puerto Rico														404.32	
Portugal															
Santo Domingo														376.76	
South Africa								45.21	45.21	45.21				.50	
Switzerland	2,724.18		306.99				2,417.19	4.34	2,412.85	4.34	2,417.19	.061944	.95.42	225.75	
Turkey															
Yugoslavia	4,731.46					973.07	5,704.53	11,826.51	6,121.98	11,826.51	5,704.53	.153266	225.20	997.05	
	1,701,050.56	383,272.84	41,078.97	44,200.72	1,481,027.25	58,481.75	3,709,112.09	2,156,941.45	1,552,170.64	2,169,817.24	3,721,987.88	100.0 0000	146,931.21	151,051.06	
Item #, on return	12.	10	7	13	11	2 & 13									

Revised Foreign Gross Income	1,552,170.64
Revised Total Gross Income	17,895,399.26
% Fgn. of Gross	.8671778%
Total expense to be allocated	4,559,918.96
Total expense allocated to fgn.	138,205.21
Group Insurance	8,539.00
	146,931.21

*Canada Starch Co. free—cr. G.E.M.

Exhibit 12-H.

UCTS REFINING COMPANY AND REFINACOES DE MILHO CONSOLIDATED RETURN
17 BATTERY PLACE NEW YORK, N. Y.

ON INCOME DECLARED VALUE EXCESS-PROFITS AND DEFENSE TAX RETURN—1940

CORN PRODUCTS REFINING COMPANY
COMPUTATION OF FOREIGN TAX CREDIT UNDER SECTION 131 (b) (1)

A Revised Foreign Gross Income	Adjustment for ratable expenses Red Figures	Total Gross Income	%	B $	C Foreign General Expense	Pension Insurance	Profit Sharing	Net Income A (B + C)	Foreign Tax Credit Computation: Interest	131 (a) Royalties	Dividends	131 f Dividends	(a) + (f)	131 (b) (1) 7,726,586.25	Limitation 1,854,380.70	Credit Allowable
176,361.90	12,384.62	188,746.52	5.071121	7,451.06	2,780.56			106,130.28		960.58	8,123.90		9,084.48	2,150112	39,871.26	90,084.48
					107.12			107.12								
444.76	444.76				134.74			579.50								
98,267.47	22,184.79	120,452.26	3.230235	4,755.04	3,407.55	Figures not available at time of filing return		90,104.88		8,115.93		5,818.84 D	5,818.84	1,166167	21,625.18	5,818.84
233,085.15		233,085.15	6.278503	9,225.08	253.44			224,206.63		10,076.26		44,403.46	54,569.72	2,901756	53,809.60	53,809.60 L
2,867.63	2,867.63				4,986.06			7,853.69								
8,812.95	13.25	8,826.20	.237137	348.43	1,116.45			7,348.07		306.63			306.63	.095101	1.763.53	306.63
2,464.74	2,464.74				19.60			2,484.34								
2,004.32		2,004.32	.053851	79.12	8.67			1,916.53						.024804	459.96	
755.42	755.42				4.17			759.59								
6,594.00	4.16	6,598.46	.177283	200.48	201.10			6,132.42			410.68		410.68	.070368	1,471.78	410.68
576,125.52	11,998.33	588,123.85	15.801337	23,247.10	22,151.28			530,727.14		704.92		128,457.56	129,162.48	6.839232	127,381.71	127,381.71 L
12,348.39	14,223.39	1,875.00	.050376	74.02	23,545.08			35,967.49								
255,846.58	2,084,072.11	1828,225.53	49.119546	72,171.94	14,721.54			342,742.06		33,488.93	10,139.94	21,078.83	64,707.70			
367,893.33		367,893.33	9.883824	14,523.16	673.65			372,696.52				15,377.39 D	15,377.39	4.564713	84,647.16	15,377.39
25,280.80		25,280.80	.679228	998.00	931.19			23,351.61				3,290.39	3,290.39	.392224	5,004.38	3,290.39
130,506.55	116.51	130,623.06	3.670741	5,393.41	18,135.38			117,977.76						1.528907	28,314.67	
174,966.00		174,966.00	4.690875	6,907.05	31,287.30			136,771.65			18,030.59	37,355.09	55,385.68	1.770143	32,825.19	32,825.19 L
30,565.30		30,565.30	.821209	1,208.61	5,143.90			24,214.79	1,278.67	2,133.08			3,411.75	.313396	5,811.55	3,411.75
1,319.23	1,319.23							1,319.23								
1,908.50	1,908.50				11.46			2,009.96								
3,091.06	3,093.44	2.38	.000064	.09	17,758.56			20,849.71								
					6,667.88			6,667.88								
					404.32			404.32								
					376.76			376.76								
45.21	45.21				.50			45.71								
2,412.85	4.34	2,417.19	.061944	.95.42	225.75			2,091.08			163.45	601.47	764.92	.027071	502.00	502.00 L
6,121.98	11,826.51	5,704.53	.153266	225.20	997.05			7,344.23			963.61	1,044.65	2,038.26			
1,552,170.64	2,169,817.24	3,721,987.88	100.0 0000	146,931.21	151,051.06			1,254,188.37	1,278.67	37,504.14	50,054.36	257,517.68	352,444.85			252,218.66

Foreign Gross Income	1,552,170.64
Total Gross Income	17,895,399.26
% of Gross	.8671778%
Expense to be allocated	1,559,918.96
Expense allocated to fgn.	138,205.21
Insurance	8,539.00
	146,931.21

Petitioner's Exhibit 13.

445

2996

FEED CONTRACT

CORN PRODUCTS SALES COMPANY
17 Battery Place

Eastern States Milling Co.,
Ontario St. & Cloverdale Rd.,
Buffalo, N. Y.

New York, May 17, 1939.

Dear Sir:

446

We hereby confirm upon the following terms and conditions your order received through C. J. Irwin Co., Inc. 482-661 for

1800 tons Buffalo Corn Gluten Feed Bulk @ first price and terms announced for month taken
4200 tons Diamond Corn Gluten Meal Bulk @ " " " " " nounced for month taken
350 tons Diamond Corn Gluten Meal Bulk each month, June 1939 to May 1940
150 " Buffalo Corn Gluten Feed Bulk " " " " " " "
Boston basis
Directions later

TERMS OF PAYMENT: Draft payable in 3 days thru M. & T. Trust Co., Buffalo, NY

447

If at any time before delivery the financial responsibility of buyer becomes impaired or unsatisfactory to the seller, cash payment or satisfactory security may be required by the seller before delivery.

SHIPMENT: At seller's option. June 1939 to May 1940

F. O. B. cars at point of shipment, freight prepaid—deduct Buffalo to Boston freight.

PRICE GUARANTEE: Guaranteed against our lower price in your market on date of shipment.

Buyer to pay any advance in freight rate in effect when shipment is made. If lower freight is in effect when shipment is made—buyer to get the benefit.

This sale is made on the basis of factory weights.

Any duty, excise or other tax or charge, Federal, State or Municipal, hereinafter imposed on the products covered hereby, or their manufacture, refining or sale, shall be added to the price herein specified.

Petitioner's Exhibit 13.

448 Seller shall in no case be held responsible for demurrage or storage charges at destination, or for any damages arising from delayed shipments caused by strikes, accidents, car shortage, inability to procure supplies or interruptions of manufacture beyond his control.

Seller not to be responsible for the adaptability of the goods to be delivered on this contract for any specific purpose unless specially and separately provided for in this contract.

SELLER RESERVES the right to ship from any factory and to select the route.

It is agreed that the goods sold under this contract are for consumption in the United States only and not for export.

Respectfully yours,

449 CORN PRODUCTS SALES CO.
Per C. KAYHART
East. Sales Manager.

EASTERN STATE MLG CORP
Accepted H. N. Hasteller

H.D.

Date May 20, 1939.

Please sign this confirmation and return.

450

151

Petitioner's Exhibit 14.

451

STRATTON GRAIN COMPANY
BOARD OF TRADE BUILDING

Chicago, ...

.....

.....

In accordance with your instructions, we have this day *BOUGHT* for your account and risk:

Quantity	Delivery	Article	Price	From Whom Bought

452

All transactions made by us for your account contemplate the actual receipt and delivery of the property and payment therefor.

In order to have your contract for future delivery of property stand open until such delivery occurs, you must keep deposited with us funds to protect us against intervening changes in the value of the property; and in case such funds become in our judgment at any time insufficient for such protection, you understand that you authorize us to dispose of your contracts on the open market without further notice to you.

453

We also reserve the privilege of substituting at any time other parties as principals with you in following your trades until consummated by delivery or otherwise disposed of.

All purchases and sales made by us for you are made in accordance with and subject to the rules, regulations and customs of the Exchange in which the trades are made, and all amendments that may be made thereto.

We will only be responsible for communications addressed to the

STRATTON GRAIN COMPANY
J-17

Per .....

Petitioner's Exhibit 15.

454

STRATTON GRAIN COMPANY
BOARD OF TRADE BUILDING

Chicago, ...

.....

.....

In accordance with your instructions, we have this day *SOLD* for your account and risk:

Quantity	Delivery	Article	Price	To Whom Sold
455				

All transactions made by us for your account contemplate the actual receipt and delivery of the property and payment therefor.

In order to have your contract for future delivery of property stand open until such delivery occurs, you must keep deposited with us funds to protect us against intervening changes in the 456 value of the property: and in case such funds become in our judgment at any time insufficient for such protection, you understand that you authorize us to dispose of your contracts on the open market without further notice to you.

We also reserve the privilege of substituting at any time other parties as principals with you in following your trades until consummated by delivery or otherwise disposed of.

All purchases and sales made by us for you are made in accordance with and subject to the rules, regulations and customs of the Exchange in which the trades are made, and all amendments that may be made thereto.

We will only be responsible for communications addressed to the

STRATTON GRAIN COMPANY.

Per .....

J-18

Petition for Review.

457

THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 202

CORN PRODUCTS REFINING COMPANY,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent. 458

To the Honorable Judges of the United States Court of Appeals for the Second Circuit.

COMES NOW Corn Products Refining Company by its attorneys, Jay O. Kramer, Esq., and Samuel A. McCain, Esq., and respectfully shows:

I.

JURISDICTION

459

That petitioner is a corporation organized under the laws of the State of New Jersey on February 6, 1906, with its principal office at 17 Battery Place, New York 4, New York.

That the consolidated income tax return for the calendar year 1940 was filed with the Collector of Internal Revenue, Second District of New York, whose office is within the jurisdiction of this honorable Court. The Court in which review of this cause is sought is the United States Court of Appeals for the Second Circuit.

The petitioner files this Petition for review pursuant

460 to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

2.

NATURE OF THE CONTROVERSY

The nature of the controversy is as follows:

Petitioner is a corporation organized under the laws of the State of New Jersey on February 6, 1906. It filed its consolidated income tax return for the year 1940 with
461 the Collector of Internal Revenue, Second District, New York. The taxes in controversy are income taxes. The amount of the deficiency asserted by respondent in his notice of deficiency is $163,804.78. On the other hand, petitioner claims that it has overpaid its tax for such year.

Petitioner is a nationally-known corporation engaged in the manufacture and sale of corn products, including starches, sugars, syrups, oils and feeds. The maximum amount of raw corn which petitioner could store in its own plants during 1940 was 2,303,000 bushels, or approximately a three weeks' supply. The daily grind capacity of peti-
462 tioner's plants during 1940 was 147,700 bushels. Similar conditions existed in prior years. It had been the custom of petitioner for a number of years prior to 1940 to purchase corn futures contracts. A corn future consists of a contract to buy futures contracts. A corn future consists of a contract to buy 5,000 bushels of corn, or some multiple thereof, of a stated quality, at a stated price, for delivery during a stated month in the future. Such contracts called for delivery within eleven months or less from the date of the contract. Such contracts are freely dealt with on various commodity exchanges, through brokers. The buyer furnishes his broker with margin, a percentage of the contract price.

During the years prior to 1940, petitioner engaged in 463
the purchase and sale of corn futures. It was found to be
far less expensive to purchase corn futures by putting
up a small amount of margin than to buy and store addi-
tional raw corn beyond petitioner's own limited capacity.
The margin charges of futures contracts were less than
storage and carrying charges in public elevators. This
program also avoided financing the purchase of raw
corn by large bank loans.

The corn futures contracts were not sold to customers
in the regular course of petitioner's business but were
disposed of through brokers on a regulated exchange,
nor were such contracts included in inventory, neither 464
were they subject to depreciation.

Petitioner suffered severe losses in the droughts of
1934 and 1936 when the price of corn rose sharply. One
of its major products, cerelose, a refined corn sugar, com-
petes with cane and beet sugar. Since it is a comparatively
new sugar, less sweet than cane or beet, its price to the
consumer is generally less than beet or cane sugar with
which it competes. The two droughts caused the cost of
cerelose to rise out of proportion to its selling price. As
a result in 1937, petitioner lost money on its cerelose
sales. In an attempt to meet this condition, petitioner
envisioned a plan or program in 1937 whereby it would 465
buy corn futures whenever it considered the price of corn
cheap, and would establish a long futures position in the
neighborhood of 12,000,000 bushels. This position would
be built up and maintained during the year until it could
be ascertained to some degree of certainty that no
drought was likely to occur. The position would then
be liquidated in part when, usually in July, favorable
crop conditions were forecast.

The proposed plan was never put into full operation.
Petitioner found it economically impractical to build up
and carry the planned long position of 12,000,000 bushels.

466 The Commodity Exchange Authority intervened in petitioner's program and objected to the size of petitioner's position in 1938. A complaint was brought by that Authority which was dismissed in 1940.

In 1939, the outbreak of the European war rendered any plan unnecessary. The price of cane and beet sugar rose substantially due to war conditions, carrying with it the price of cerelose. The need to stabilize the cost of cerelose thereupon disappeared. The petitioner never was able to put its plan or program into full effect.

The petitioner's accounting practice was to account for its profits or losses on corn futures in an account called
467 "Corn Miscellaneous", the balance in that account at the end of each year was debited or credited to cost of sales. In 1940, the profit balance of $680,587.39 was treated in petitioner's return as a reduction of the "cost of goods sold". In the two previous years, 1938 and 1939, the transactions had resulted in losses of $815,462.57, and $424,437.54, respectively.

The general sales policy of petitioner at all times material, was to enter into contracts providing for shipment within thirty days. A price was named but a provision was made that if the market price in effect on the date
468 of delivery was lower, the buyer was to have the advantage of such lower price.

The questions in controversy are two:

1. Whether the purchase and sale of corn futures contracts by this petitioner were capital transactions, subject to the limitations of Section 117 of the Internal Revenue Code, or whether the gains and losses were from "hedges", resulting in ordinary income and ordinary deductions.

2. Whether the provisions of Section 118 which concerns "wash sales" has application to the corn futures

transactions carried on by petitioner. Respondent. find- 469
ing that neither Section 117 nor Section 118 applied, determined a deficiency of $163,804.78 for the year 1940 against petitioner.

3.

PETITION FOR REVIEW

On the 17th day of September, 1948, petitioner filed with The Tax Court of the United States its petition for redetermination of deficiency. Respondent filed his answer on November 1, 1948. The proceeding came on for 470
hearing June 13, 1950, and on February 20, 1951, the Court promulgated its opinion. It held that petitioner's transactions in corn futures were not subject to the "wash sales" provisions of Section 118 of the Internal Revenue Code. The Court found it unnecessary to pass upon the question of whether such transactions constituted "hedges" and made no ruling with respect to Section 117.

The Court entered its decision on the 15th day of June, 1953, and decided that there is a deficiency of $80,731.19 for the year 1940 in income tax. 471

4.

ASSIGNMENT OF ERRORS

Petitioner assigns as errors the following acts and omissions of The Tax Court of the United States:

1. The finding of The Tax Court of the United States that the transactions of petitioner in corn futures contracts during the year 1940 were not capital transactions under Section 117 of the Internal Revenue Code.

472 2. The finding of The Tax Court of the United States that the "wash sales" provisions of Section 118 of the Internal Revenue Code did not apply to petitioner's transactions in corn futures contracts in 1940.

WHEREFORE, your petitioner petitions that the decision of The Tax Court of the United States be reviewed by the United States Court of Appeals for the Second Circuit; that a transcript of the record be prepared in accordance with the rules of said Court and transmitted to the Clerk of said Court for filing; that proper action be taken to the end that the errors complained of may be
473 reviewed by said Court.

Respectfully submitted,

/s/ JAY O. KRAMER
Jay O. Kramer
c/o Milton M. Bernard
30 East 40th Street
New York, New York

/s/ SAMUEL A. McCAIN
Samuel A. McCain
474 17 Battery Place
New York 4, New York

(Verified June 23, 1953.)

Notice of Filing Petition for Review.

475

[SAME TITLE.]

To: KENNETH W. GEMMILL, Acting
Chief Counsel,
Bureau of Internal Revenue.

You are hereby notified that the above-named petitioner did, on the 25th day of June, 1953, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Court of Appeals for the Second Circuit, of the decision of this Court heretofore rendered in the above-entitled case. Copy of the petition for review as filed is hereto attached and served upon you. 476

Dated this 25th day of June, 1953.

(Signed) VICTOR S. MERSCH, Clerk
Victor S. Mersch, Clerk,
The Tax Court of the United States.

Service of copy of Petition for Review acknowledged this 25th day of June, 1953. 477

KENNETH W. GEMMILL
C. A. R.
Chief Counsel.
Bureau of Internal Revenue,
Attorney for Respondent.

478 **Designation of Contents of Record on Review.**

[SAME TITLE.]

To the Clerk of the Tax Court of the United States:

You will please prepare, transmit and deliver to the Clerk of the United States Court of Appeals for the Second Circuit copies duly certified as correct of the following documents and records in connection with the petition for review heretofore filed by petitioner in the above entitled
479 cause:

1. Docket entries of all proceedings before The Tax Court.

2. Pleadings before the Tax Court:

(a) Petition filed the 20th day of September 1948, including annexed copy of deficiency letter and statement attached thereto.

(b) Answer.

480 3. Findings of Fact, Opinion and Decision.

4. Official Report of Proceedings before The Tax Court, together with all exhibits in evidence and the partial stipulation of facts.

5. Petition for review, together with proofs of service of notice of filing and of service of a copy of petition for review.

6. This Designation of Contents of Record on Review.

Said transcript is to be prepared, certified and transmitted as required by law, and the rules of The United States Court of Appeals for the Second Circuit. 481

JAY O. KRAMER
Jay O. Kramer
Attorney for Petitioner on Review
c/o Milton M. Bernard
10 East 40th Street
New York 16, N. Y.

/s/ SAMUEL A. McCAIN
Samuel A. McCain 482
Attorney for Petitioner on Review
17 Battery Place
New York 4, N. Y.

Admission of Service:

Receipt is hereby acknowledged and service is accepted this 8th day of July 1953 of the Designation of Contents of Record on Review filed in the above entitled cause.

(Signed) KENNETH W. GEMMILL CAR
Acting Chief Counsel
Bureau of Internal Revenue 483
Attorney for Respondent on Review

Certificate.

484

THE TAX COURT OF THE UNITED STATES
Washington

Docket No. 20399

CORN PRODUCTS REFINING COMPANY
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE
Respondent.

485

I, Victor S. Mersch, clerk of The Tax Court of the United States do hereby certify that the foregoing pages, 1 to 188, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 29th day
486 of July, 1953.

Last day to file record is August 17, 1953.

VICTOR S. MERSCH
Clerk,
The Tax Court of the United States.

(Seal)

TRANSCRIPT OF RECORD IN TAX COURT

DOCKET NO. 22074 (1942).

THE TAX COURT OF THE UNITED STATES.

Docket No. 22074.

487

CORN PRODUCTS REFINING COMPANY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

APPEARANCES

488

For Petitioner: JAY O. KRAMER, Esq.
SAMUEL A. McCAIN, Esq.

For Respondent: WARD MANDRY, Esq.

Docket Entries.

1949

Mar 9—Petition received and filed. Taxpayer notified. Fee paid.

Mar 9—Request for hearing in New York filed by taxpayer. Granted 3/25/49.

489

Mar 10—Copy of petition served on General Counsel.

Apr 14—Answer filed by General Counsel.

Apr 20—Copy of answer served on Taxpayer.

1951

Mar 13—Hearing set June 18, 1951, New York.

Mar 15—Entry of appearance of Jay O. Kramer as counsel filed.

490 Jun 18—Hearing had before Judge Opper on the merits. Stipulation of Facts with Exhibits 1-A thru 5-E, Supplemental Stipulation of Facts (Amended) filed. Appearance of Samuel A. McCain as counsel filed. Briefs due Aug. 17, 1951; replies due Oct. 1, 1951.

Jul 9—Transcript of hearing 6/18/51 filed.

Aug 8—Motion for extension to Aug. 27, 1951 to file original briefs and Oct. 11, 1951 to file reply briefs filed by taxpayer. Granted 8/13/51.

491 Aug 15—Brief filed by taxpayer. Copy served 8/17/51.

Aug 16—Brief filed by General Counsel.

Oct 8—Reply brief filed by taxpayer. Copy served.

Oct 11—Reply brief filed by General Counsel.

1952

Jun 30—Memorandum findings of fact and opinion rendered. Opper *J.* Decision will be entered under Rule 50. Copy served 7/1/52.

Dec 23—Petitioner's computation filed.

492 Dec 30—Hearing set 1/14/53 on petitioner's computation. Copy served.

1953

Jan 2—Respondent's computation filed.

Jan 14—Hearing had before Judge Opper. Record held open to receive motion to reopen case to receive briefs in consideration of the alternative computation now on file. Memorandum filed at hearing. Briefs due Feb. 15, 1953.

Jan 19—Transcript of hearing 1/14/53 filed. 493

Jan 26—Joint motion to reopen case filed. Granted 1/26/53.

Feb 13—Brief filed by taxpayer.

Feb 16—Motion for extension to Feb. 28, 1953, to file brief filed by General Counsel. Granted 2/17/53.

Mar 2—Memorandum brief filed by General Counsel. Copy served 3/4/53.

May 28—Supplemental Opinion rendered, Opper *J.* Decision will be entered under Rule 50. Copy served. 494

Jun 9—Respondent's Computation filed. Agreed to.

Jun 15—Decision entered, Opper *J.* Div. 14.

Jun 25—Petition for review by U. S. Court of Appeals, Second Circuit, with assignments of error filed by petitioner.

Jun 25—Proof of service filed.

Jul 8—Designation of Contents of Record with Proof of service thereon filed by petitioner.

495

496 **Petition.**

[SAME TITLE.]

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (SN-IT-7), dated December 14, 1948, and as a basis of its proceeding alleges as follows:

497 1. The petitioner is a corporation duly organized under the laws of the State of New Jersey, with its principal office at 17 Battery Place, New York 4, N. Y. The return for the period here involved (1942) was filed with the Collector of Internal Revenue for the Second District of New York.

2. The notice of deficiency (a copy of which is attached and marked Exhibit "A") was mailed to the petitioner on December 14, 1948.

498 3. The taxes in controversy are for the calendar year 1942, representing deficiencies claimed by the Commissioner of Internal Revenue of excess profits tax in the sum of $1,520,519.39 and declared value excess-profits tax in the sum of $14,487.94, as against a refund claimed by the petitioner.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) The Commissioner of Internal Revenue erred in understating net income for declared value excess-profits tax computation in the sum of $110,753.23 and in understating excess profits net income computed under income credit method in the sum of $140,575.63. This error resulted from his failure to treat profits and losses realized

by petitioner in 1942 from the purchase and sale of corn futures contracts as capital gains and losses, under Sections 117 and 118 of the Internal Revenue Code. The error comprised an overstatement of "Cost of goods sold" in the sum of $109,969.38, an understatement of recognized net short-term capital gain in the sum of $606.25, and an understatement of recognized net long-term capital gain in the sum of $177.60. 499

(b) The Commissioner of Internal Revenue erred in understating the excess profits credit based on income for 1942 in the sum of $400,983.16. This error resulted from his failure to treat profits and losses realized by petitioner in 1939 from the purchase and sale of corn futures contracts as capital gains and losses, under Sections 117 and 118 of the Internal Revenue Code. This error comprised an overstatement of cost of goods sold in the sum of $424,437.54 and an overstatement of recognized net short-term capital gain in the sum of $2,350.00 in determining the excess profits net income computed under income credit method for 1939. 500

(c) The Commissioner of Internal Revenue erred in understating the excess profits credit based on income for 1942 in the sum of $298,744.75. This error resulted from his failure to disallow the sum of $314,468.16 in determining the excess profits net income computed under income credit method for 1939. The said sum of $314,468.16 represents an abnormal deduction under Section 711 (b) (1) (J) (ii) of the Internal Revenue Code, which was incurred by the petitioner in connection with the purchase and sale of corn futures contracts. This error is alleged in the alternative to errors 4. (a) and 4. (b) hereof. 501

(d) The Commissioner of Internal Revenue erred in understating the excess profits credit based on income for 1942 in the sum of $122,941.88. This error resulted from his failure to include as foreign dividend income

502 the sum of $129,412.50 in determining the excess profits net income computed under income credit method for 1939.

(e) The Commissioner of Internal Revenue erred in understating the excess profits credit based on income for 1942 in the sum of $89,701.73. This error resulted from his failure to include as foreign dividend income the sum of $94,422.87 in determining the excess profits net income computed under income credit method for 1939.

(f) The Commissioner of Internal Revenue erred in understating the unused excess profits credit adjustment
503 for 1942 in the sum of $436,945.36. This error resulted from his failure to exclude from 1941 excess profits net income computed under income credit method the abnormal income excludible under Section 721 of the Internal Revenue Code.

(g) The Commissioner of Internal Revenue erred in understating the unused excess profits credit adjustment for 1942 in the sum of $806,431.32. This error resulted from his failure to treat profits and losses realized by petitioner in 1939 from the purchase and sale of corn futures contracts as capital gains and losses, under Sec-
504 tions 117 and 118 of the Internal Revenue Code, in computing excess profits credit based on income for each of the years 1940 and 1941. This error comprised an overstatement of cost of goods sold in the sum of $424,437.54 in determining the excess profits net income computed under income credit method for 1939.

(h) The Commissioner of Internal Revenue erred in understating the unused excess profits credit adjustment for 1942 in the sum of $597,489.50. This error resulted from his understating the excess profits credit based on income for each of the years 1940 and 1941 by failing to disallow for 1939 the sum of $314,468.16 in determining

the excess profits net income computed under income credit method for 1939. The sum of $314,468.16 represents an abnormal deduction under Section 711 (b) (1) (J) (ii) of the Internal Revenue Code, which was incurred by the petitioner in connection with the purchase and sale of corn futures contracts. This error is pleaded in the alternative to error 4. (g) hereof. 505

(i) The Commissioner of Internal Revenue erred in understating the unused excess profits credit adjustment for 1942 in the sum of $245,883.76. This error resulted from his understating the excess profits credit based on income for each of the years 1940 and 1941, by failing to include the sum of $129,412.50 of Brazilian dividends in determining the excess profits net income computed under income credit method for 1939. 506

(j) The Commissioner of Internal Revenue erred in understating the unused excess profits credit adjustment for 1942 in the sum of $179,403.46. This error resulted from his understating the excess profits credit based on income for each of the years 1940 and 1941, by failing to include the sum of $94,422.87 of Italian dividends in determining the excess profits net income computed under income credit method for 1939. 507

(k) The Commissioner of Internal Revenue erred in understating the unused excess profits credit adjustment for 1942 in the sum of $618,259.29. This error resulted from his failure to treat profits and losses realized by petitioner in 1940 from the purchase and sale of corn futures contracts as capital gains and losses, under Sections 117 and 118 of the Internal Revenue Code, in determining the excess profits net income computed under income credit method for 1940. The error comprised an understatement of cost of goods sold in the sum of $680,587.39 and an understatement of recognized net short-term capital gain in the sum of $62,328.10 in de-

508 terming the excess profits net income computed under income credit method for 1940.

(1) The Commissioner of Internal Revenue erred in understating the unused excess profits credit adjustment for 1942 in the sum of $151,021.86. This error resulted from his failure to treat profits and losses realized by petitioner in 1941 from the purchase and sale of corn futures contracts as capital gains and losses, under Sections 117 and 118 of the Internal Revenue Code, in determining the excess profits net income computed under income credit method for 1941. The error comprised an
509 understatement of cost of goods sold in the sum of $180,056.23 and an understatement of recognized net short-term capital gain in the sum of $29,034.37 in determining the excess profits net income computed under income credit method for 1941.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) (1) In the 1942 return of the petitioner the sum of $109,969.38 representing net loss in 1942, from the purchase and sale of corn futures contracts, was treated as an addition to the cost of goods sold.

510

(2) All such corn futures contracts were purchased through members of a recognized Commodity Exchange in varying quantities. Such contracts were subject to the rules, regulations, and customs of the Commodity Exchange where the trades were made, and, when required, were also made under authority of the Act of Congress known as the "Commodity Exchange Act."

(3) The purchase and sale of such corn futures contracts was confirmed by members of recognized Commodity Exchanges.

(4) The purchase and sale of corn futures contracts

by the petitioner constitutes the purchase and sale of 511
capital assets under the provisions of Section 117(a) of the Internal Revenue Code and does not constitute a part of "Cost of Goods Sold." Such corn futures contracts were (i) not stock in trade or other property properly includible in inventory of the petitioner; (ii) the petitioner did not hold such corn futures contracts primarily for sale to customers in the ordinary course of petitioner's trade or business; and (iii) such corn futures contracts are not property, used in the petitioner's trade or business, of a character which is subject to the allowance for depreciation.

512

(5) The petitioner did not engage in hedging transactions in respect of the corn futures contracts which it purchased, as defined in G. C. M. 17322 and in the decisions of the Courts. Petitioner never sold corn futures contracts against its inventory position and never purchased corn futures contracts to protect long-term sales contracts of its products. Petitioner's purpose in acquiring corn futures contracts was to enable it, on the maturity dates of such contracts, to take in the corn called for therein, if there should be insufficient cash corn available in the market on such maturity dates to meet petitioner's requirements. The petitioner sold such contracts when it 513
became apparent that there would be sufficient cash corn available on their maturity dates to meet its requirements, usually replacing the contracts so sold, shortly before or after each such sale, with other corn futures contracts of later maturity. Infrequently, when petitioner endeavored to sell such a contract, it could not find a buyer and, therefore, had to take in the corn at the maturity date of the contract.

(6) The cost of the corn futures contracts purchased by the petitioner, which contracts were sold during 1942 and which were held for a period of not more than six months

514 (such cost and holding period having been computed without the application of the provisions of Section 118 of the Internal Revenue Code) was $197,598.13 more than their selling price.

(7) The cost of the corn futures contracts purchased by the petitioner, which contracts were sold during 1942 and which were held for a period of more than six months (such cost and holding period having been computed without the application of the provisions of Section 118 of the Internal Revenue Code) was $87,628.75 less than their selling price.

515 (8) The basis of the corn futures contracts purchased by the petitioner, which contracts were sold during 1942 and which were held for a period of not more than six months (such basis and holding period having been computed in accordance with the provisions of Section 118 of the Internal Revenue Code) was $606.25 less than their selling price.

(9) The basis of the corn futures contracts purchased by the petitioner, which contracts were sold during 1942 and which were held for a period of more than six months (such basis and holding period having been computed in
516 accordance with the provisions of Section 118 of the Internal Revenue Code) was $75,163.13 less than their selling price.

(10) The sum of $109,969.38 set forth in paragraph 5, (a) (1) hereof, was treated by the petitioner in its return for 1942, as an addition to the cost of goods sold.

(11) The decisions of the Courts in the matters of (1) *Trenton Cotton Oil Company*, 147 F. (2d) 33 (rehearing denied, 148 F. (2d) 208), (2) *Estate of Dorothy Makransky*, 5 T. C. 397 (affirmed by CCA-3, 154 F. (2d) 59), and (3) *Stewart Silk Corporation*, 9 T. C. 174

(A. 1948-3-12739) were all promulgated after the filing of the petitioner's 1941 and 1942 returns. 517

(12) A corn futures contract is a security. (*Trenton Cotton Oil Company*, 147 F. (2d) 33 (rehearing denied, 148 F. (2d) 208)).

(13) Section 118 of the Internal Revenue Code applicable to wash sales of securities is applicable to losses realized from the sale of corn futures contracts.

(b) (1) In the 1939 return of the petitioner the sum of $424,437.54 representing net loss in 1939, from the purchase and sale of corn futures contracts, was treated as an addition to the cost of goods sold. This amount is the net loss realized during 1939 from the purchase and sale of corn futures contracts under facts and circumstances similar to those alleged in paragraphs 5. (a) (2), 5. (a) (3), 5. (a) (4), 5. (a) (5), 5. (a) (11), 5. (a) (12), and 5. (a) (13) hereof. 518

(2) The cost of the corn futures contracts purchased by the petitioner, which contracts were sold during 1939 and which were held for a period of not more than six months (such cost and holding period having been computed without the application of the provisions of Section 118 of the Internal Revenue Code) was $92,453.09 less than their selling price. 519

(3) The cost of the corn futures contracts purchased by the petitioner, which contracts were sold during 1939 and which were held for a period of more than six months (such cost and holding period having been computed without the application of the provisions of Section 118 of the Internal Revenue Code) was $516,890.63 more than their selling price.

(4) The basis of the corn futures contracts purchased by the petitioner, which contracts were sold during 1939

520 and which were held for a period of not more than six months (such basis and holding period having been computed in accordance with the provisions of Section 118 of the Internal Revenue Code) was $2,350.00 more than their selling price.

(5) The basis of the corn futures contracts purchased by the petitioner, which contracts were sold during 1939 and which were held for a period of more than six months (such basis and holding period having been computed in accordance with the provisions of Section 118 of the Internal Revenue Code) was $242,200.03 more than their
521 selling price.

(6) The sum of $424,437.54 set forth in paragraph 5. (b) (1) hereof, was treated by the petitioner, in its return for 1939, as an addition to the cost of goods sold.

(c) (1) In the returns of the petitioner for the years 1932 through 1942, the following sums, the net gain or net loss in each of said years from the purchase and sale of corn futures contracts, were treated as reductions of or as additions to the cost of goods sold:

522

Year	Net Gain (treated as a reduction of cost of goods sold)	Net Loss (treated as an addition to cost of goods sold)
1932	$	$ 27,943.75
1933	27,531.25	
1934		3,450.00
1935	56,768.75	
1936		165,532.27
1937	590,339.35	
1938		815,462.57
1939		424,437.54
1940	680,587.39	
1941	180,056.23	
1942		109,969.38

Each of the foregoing amounts is the net gain or the net loss realized from the purchase and sale of corn futures contracts during each of the years 1932 through 1942, under facts and circumstances similar to those alleged in paragraphs 5. (a) (2), 5. (a) (3), and 5. (a) (5) hereof. 523

(2) The net gain or the net loss for each year set forth in paragraph 5. (c) (1) hereof, was treated by the petitioner in its returns as a reduction of or an addition to the cost of goods sold.

(3) In the event it is determined that the purchase and sale of corn futures contracts by the petitioner, does not constitute the purchase and sale of capital assets under the provisions of Section 117 (a) of the Internal Revenue Code, then the net gain or the net loss from the purchase and sale of such contracts constitutes, respectively, a reduction of or an addition to "Other Deductions Authorized by Law" and does not constitute a part of "Cost of Goods Sold." The amount of the net gain or the net loss for each year is set forth in paragraph 5. (c) (1) hereof. 524

(4) The amounts set forth in paragraph 5. (c) (1) hereof constitute "Other Deductions Authorized by Law" (paragraph 5. (c) (3) hereof) and meet the requirements of Section 711 (b) (1) (K) (ii) of the Internal Revenue Code in that the above-mentioned amounts are neither the consequence of an increase in the gross income of the taxpayer in its base period nor a decrease in the amount of some other deduction in its base period, and are not a consequence of a change at any time in the type, manner of operation, size, or condition of the business engaged in by the taxpayer. A schedule setting forth the details of the computation of the adjustment of abnormal deductions under Section 711 (b) (1) (J) (ii) of the Internal Revenue Code, "'Other Deductions Authorized by Law' from the purchase and sale of corn futures contracts," is attached and marked Exhibit "B." 525

526 (5) A statement of the facts set forth in paragraph 5. (c) (4) hereof, together with a copy of Exhibit "B," both in duplicate, have been duly submitted to the Commissioner of Internal Revenue, c/o Technical Staff, New York Division, Bureau of Internal Revenue, 23rd Floor, Empire State Building, New York 1, New York.

(d) (1) Maizena Brasil, S. A., a Brazilian corporation, during the year 1939 declared and paid a dividend of 2,175,000,000 Brazilian Milreis to the petitioner, a stockholder thereof.

527 (2) The said dividend set forth in paragraph 5. (d) (1) hereof, constituted taxable foreign dividend income in 1939.

(3) The fair market value and rate of exchange for converting the dividend set forth in paragraph 5. (d) (1) hereof, was $.0595 per Milreis, making a dollar equivalent of $129,412.50.

(4) The said sum of $129,412.50 alleged in paragraph 5. (d) (3) hereof, was not included in petitioner's taxable income for 1939 by either the petitioner or the Commissioner of Internal Revenue.

528 (e) (1) Various Italian corporations, during the year 1939 declared and paid dividends aggregating 4,496,327.00 Italian Lire to the petitioner, a stockholder thereof.

(2) The said dividends set forth in paragraph 5. (e) (1) hereof, constituted taxable foreign dividend income in 1939.

(3) The fair market value and rate of exchange for converting the dividends set forth in paragraph 5. (e) (1) hereof, was $.021 per Lira, making a dollar equivalent of $94,422.87.

(4) The said sum of $94,422.87 alleged in paragraph

5. (e) (3) hereof, was not included in petitioner's taxable income for 1939 by either the petitioner or the Commissioner of Internal Revenue. 529

(f) (1) In determining the petitioner's excess profits net income computed under income credit method for 1941, the Commissioner of Internal Revenue excluded therefrom the sum of $436,945.36 as constituting abnormal income under Section 721 of the Internal Revenue Code.

(g) (1) In the 1939 return of the petitioner the sum of $424,437.54 representing net loss in 1939, from the purchase and sale of corn futures contracts, was treated as an addition to the cost of goods sold. This amount is the net loss realized during 1939 from the purchase and sale of corn futures contracts under facts and circumstances similar to those alleged in paragraphs 5. (a) (2), 5. (a) (3), 5. (a) (4), 5. (a) (5), 5. (a) (11), 5. (a) (12), and 5. (a) (13) hereof. 530.

(2) The cost of the corn futures contracts purchased by the petitioner, which contracts were sold during 1939 and which were held for a period of not more than eighteen months (such cost and holding period having been computed without the application of the provisions of Section 118 of the Internal Revenue Code) was $424,437.54 more than their selling price. 531

(3) The basis of the corn futures contracts purchased by the petitioner, which contracts were sold during 1939 and which were held for a period of not more than eighteen months (such basis and holding period having been computed in accordance with the provisions of Section 118 of the Internal Revenue Code) was $222,471.90 more than their selling price.

(4) The basis of the corn futures contracts purchased by the petitioner, which contracts were sold during 1939 and which were held for a period of more than eighteen

532 months (such basis and holding period having been computed in accordance with the provisions of Section 118 of the Internal Revenue Code) was $222,078.13 more than their selling price.

(5) The sum of $424,437.54 set forth in paragraph 5. (g) (1) hereof, was treated by the petitioner, in its return for 1939, as an addition to the cost of goods sold.

(h) (1) The facts and circumstances hereunder are similar to those alleged in paragraphs 5. (c) (1), 5. (c) (2), 5. (c) (3), 5. (c) (4), and 5. (c) (5) hereof.

533 (i) (1) The facts and circumstances hereunder are similar to those alleged in paragraphs 5. (d) (1), 5. (d) (2), 5. (d) (3), and 5. (d) (4) hereof.

(j) (1) The facts and circumstances hereunder are similar to those alleged in paragraphs 5. (e) (1), 5. (e) (2), 5. (e) (3), and 5. (e) (4) hereof.

(k) (1) In the 1940 return of the petitioner the sum of $680,587.39 representing net profit in 1940, from the purchase and sale of corn futures contracts, was treated as a reduction of the cost of goods sold. This amount is the net profit realized during 1940 from the purchase and sale
534 of corn futures contracts under facts and circumstances similar to those alleged in paragraphs 5. (a) (2), 5. (a) (3), 5. (a) (4), 5. (a) (5), 5. (a) (11), 5. (a) (12), and 5. (a) (13) hereof.

(2) The cost of the corn futures contracts purchased by the petitioner, which contracts were sold during 1940 and which were held for a period of not more than eighteen months (such cost and holding period having been computed without the application of the provisions of Section 118 of the Internal Revenue Code) was $680,587.39 less than their selling price.

(3) The basis of the corn futures contracts purchased by the petitioner, which contracts were sold during 1940 and which were held for a period of not more than eighteen months (such basis and holding period having been computed in accordance with the provisions of Section 118 of the Internal Revenue Code) was $62,328.10 less than their selling price. 535

(4) The basis of the corn futures contracts purchased by the petitioner, which contracts were sold during 1940 and which were held for a period of more than eighteen months (such basis and holding period having been computed in accordance with the provisions of Section 118 of the Internal Revenue Code) was $202,862.60 more than their selling price. 536

(5) The sum of $680,587.39 set forth in paragraph 5. (k) (1) hereof was treated by the petitioner in its return for 1940, as a reduction of the cost of goods sold.

(l) (1) In the 1941 return of the petitioner the sum of $180,056.23 representing net loss in 1941, from the purchase and sale of corn futures contracts was treated as a reduction of the cost of goods sold. This amount is the net loss realized during 1941 from the purchase and sale of corn futures contracts under facts and circumstances similar to those alleged in paragraphs 5. (a) (2), 5. (a) (3), 5. (a) (4), 5. (a) (5), 5. (a) (11), 5. (a) (12), and 5. (a) (13) hereof. 537

(2) The cost of the corn futures contracts purchased by the petitioner, which contracts were sold during 1941 and which were held for a period of not more than eighteen months (such cost and holding period having been computed without the application of the provisions of Section 118 of the Internal Revenue Code) was $180,056.23 less than their selling price.

538 (3) The basis of the corn futures contracts purchased by the petitioner, which contracts were sold during 1941 and which were held for a period of not more than eighteen months (such basis and holding period having been computed in accordance with the provisions of Section 118 of the Internal Revenue Code) was $29,034.37 less than their selling price.

(4) The basis of the corn futures contracts purchased by the petitioner, which contracts were sold during 1941 and which were held for a period of more than eighteen months (such basis and holding period having been com-
539 puted in accordance with the provisions of Section 118 of the Internal Revenue Code) was $61,818.68 less than their selling price.

(5) The sum of $180,056.23 set forth in paragraph 5. (l) (1) hereof, was treated by the petitioner in its return for 1941, as a reduction of the cost of goods sold.

WHEREFORE, the petitioner prays that this Court may hear the proceeding and grant the relief herein requested, together with any and all further relief that the Court may deem just and proper.

540

CORN PRODUCTS REFINING COMPANY,
By: H. CALLENDER
H. Callender, Treasurer
Petitioner,
17 Battery Place,
New York 4, N. Y.

(Verified March 7, 1949.)

EXHIBIT A, ANNEXED TO PETITION.

541

Form 1279 (Rev. Mar. 1946) SN-1T-7

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
New York 7, New York

Office of
Internal Revenue Agent in Charge
2nd New York Division
90 Church Street—Room 1120

Dec. 14, 1948 542

Corn Products Refining Company
17 Battery Place
New York 4, New York

Sirs:

You are advised that the determination of your excess profits tax liability for the taxable year ended December 31, 1942 discloses a deficiency of $1,520,519.39; that the determination of your declared value excess-profits tax liability for the year mentioned discloses a deficiency of $14,487.94; and that the determination of your income tax liability for the year mentioned discloses an overassessment of $242,494.37, as shown in the statement attached. 543

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are re-

544 quested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Room 1120, 90 Church Street, New York 7, New York, for the attention of NSM-90D. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

545 GEO. J. SCHOENEMAN,
Commissioner,

By (Signed) C. R. KRIGBAUM
Internal Revenue Agent in Charge.

Enclosures:
Statement
Form of waiver and acceptance
Form of claim
MRF:mam

546 STATEMENT

CORN PRODUCTS REFINING COMPANY
17 Battery Place
New York 4, New York

Tax Liability for the Taxable Year Ended December 31, 1942

	Liability	Assessed	Overassessment	Deficiency
Income Tax	$ 5,712,422.98	$5,954,917.35	$242,494.37	
Declared value excess-profits tax	$ 14,487.94	None		$ 14,487.94
Excess Profits tax	$11,289,266.61	$9,768,747.22		$1,520,519.39

Exhibit A, Annexed to Petition.

In making this determination of your tax liability, careful consideration has been given to the reports of examination dated May 29, 1947 and April 29, 1948; and to your protest dated July 27, 1948. 547

The overassessment shown herein will be made the subject of a certificate of overassessment which will reach you in due course through the office of the collector of internal revenue for your district, and will be applied by that official in accordance with section 322 (a) of the Internal Revenue Code, provided that you fully protect yourself against the running of the statute of limitations with respect to the apparent overassessment referred to in this letter, by filing with the collector of internal revenue for your district, a claim for refund on Form 843, a copy of which is enclosed, the basis of which may be as set forth herein. 548

A copy of this letter and statement has been mailed to your representative, Mr. Milton M. Bernard, 10 East 40th Street, New York 16, New York, in accordance with the authority contained in the power of attorney executed by you.

Schedule 1

ADJUSTMENTS TO NET INCOME

Net income for declared value excess-profits tax computation as disclosed by return		$27,507,041.81
Unallowable deductions and additional income:		
(a) Excessive depreciation—machinery	$334,088.93	
(b) Pension and profit-sharing payments	168,616.26	
(c) Reserve for dextrose expense	137,529.70	
(d) Hummel and Downing pensions	19,504.68	

549

Exhibit A, Annexed to Petition.

550	(e) Development and experimental costs	114,105.57	
	(f) Loss on sale of machinery	469,825.09	
	(g) Patent costs	32,300.00	
	(h) Foreign dividend from Russell and Company	5,200.00	
	(i) Bad debt	850.91	
	(j) Foreign exchange loss	2,037.00	
	(k) Condemnation expenses	250.00	
	(l) Brazilian dividends	24,954.72	1,309,261.86
	Total		$28,816,303.67
551	Nontaxable income and additional deductions:		
	(m) Domestic dividend from Russell and Company	$ 4,160.00	
	(n) Patent depreciation	2,210.36	
	(o) Depreciation on buildings	9,972.11	
	(p) Interest on United States Treasury notes	8,389.98	
	(q) Interest on bonds of local housing authorities	10,148.14	
552	(r) Interest on defaulted bonds	43,591.87	
	(s) Salaries	38,139.84	
	(t) War loss	253.54	
	(u) Renegotiation adjustment	440,000.00	
	(v) Interest on New York, New Haven & Hartford bonds	6,784.42	
	(w) Interest on United States Treasury bonds	2,849.70	566,499.96
	Net income for declared value excess-profits tax computation, as adjusted		$28,249,803.71

Exhibit A, Annexed to Petition.

Schedule 1A

553

EXPLANATION OF ADJUSTMENTS

(a) Deduction claimed for accelerated depreciation of machinery is held to be excessive in the amount of $334,088.93, as follows:

Plant	Claimed	Allowed	Excess Disallowed
Argo	$224,278.11	$ 59,807.51	$164,470.60
Pekin	151,066.67	40,284.46	110,782.21
Kansas City	80,231.07	21,394.95	58,836.12
Totals	$455,575.85	$121,486.92	$334,088.93

554

(b) It is determined that the amounts paid to, or on behalf of, employees of your subsidiary companies do not constitute expenses deductible by you under Section 23 (a) (1) (A) of the Internal Revenue Code, since that section limits deductions to those paid or incurred by *the taxpayer* in carrying on a trade or business.

(c) It is held that the deduction claimed in the amount of $137,529.70 in respect of the addition to the reserve for advertising of dextrose does not constitute an allowable deduction under any of the provisions of Section 23 of the Internal Revenue Code.

555

(d) It is held that the deduction claimed in the amount of $19,504.68 in respect of pensions paid to the employees of the Hummel and Downing Corporation is not an allowable deduction under the provisions of the Internal Revenue Code.

(e) Development and experimental costs in the amount of $114,105.57 are held to represent expenses incurred in prior years and are, therefore, unallowable as current deductions.

556 (f) Deduction claimed for loss on sale of Edgewater plant machinery has been disallowed to the extent of $469,825.09, the details of which have been furnished you heretofore.

(g) Patent costs in the amount of $32,300.00 are held to represent capital expenditures and are, therefore, unallowable as current deductions.

(h) Dividend of $5,200.00 received in the taxable year from Russell and Company is held to be includible in full in taxable income as dividends received from foreign corporations (see contra adjustment (m), infra).

557 (i) It is held that the bad debt of $850.91 due from the Schuler Chocolate Company is not deductible under the provisions of Section 23 (k) of the Internal Revenue Code for the reason that the debt did not become worthless within the taxable year.

(j) It is held that loss claimed on foreign exchange by reason of the depreciation in value of Argentine deposits does not constitute a deductible loss within the purview of the Internal Revenue Code.

(k) It is held that expenditures incurred in connection
558 with the condemnation proceedings of the Edgewater plant constitute reductions in the proceeds of the sale of such property and, as such, do not represent allowable deductions under any of the provisions of Section 23 of the Internal Revenue Code.

(l) Brazilian dividends in the amount of $101,448.93, declared on December 5, 1940, are held to represent taxable income in the current year to the extent of $24,954.72.

(m) The amount of $4,160.00 reported as a domestic dividend from Russell and Company is excluded from income by reason of adjustment (h), supra.

Exhibit A, Annexed to Petition.

(n) and (o) Deductions claimed for depreciation of patents and of buildings are increased by $2,210.36 and $9,972.11, respectively, the details of which have been furnished you heretofore. 559

(p) and (q) Interest on United States Treasury notes and on bonds of local housing authorities reported in the amounts of $8,389.98 and $10,148.14, respectively, are held to be excludible from taxable income.

(r) The amount of $43,591.87 reported as interest on defaulted bonds of the following corporations is held to represent a return of capital: 560

Corporation	Amount
New Orleans, Texas and Mexico, Inc.	$ 7,592.50
Missouri, Pacific Railway	15,000.00
New York, New Haven and Hartford Railroad Company	20,999.37
Total	$43,591.87

(s) Deduction for salaries is increased by $38,139.84 for payments made to employees not claimed on return.

(t) A deduction is allowed in the amount of $253.54, representing war loss on the account receivable of George Wehry and Company. 561

(u) Your income is reduced by $440,000.00 representing renegotiation adjustment under Section 3806 of the Internal Revenue Code.

(v) The amount of $6,784.42 reported as interest on bonds of the New York, New Haven and Hartford Railroad Company is held to be properly reportable in the taxable year 1941 and to be excludible, therefore, from taxable income in the current taxable year.

Exhibit A, Annexed to Petition.

562 (w) Interest on United States Treasury bonds issued prior to March 1, 1941 is held to be excludible from taxable income.

Credit for income taxes paid to a foreign country has been decreased from $111,123.07 to $110,540.58, computed in accordance with the provisions of Sections 31 and 131 of the Internal Revenue Code.

Schedule 2

563 COMPUTATION OF TAX

INTERNAL REVENUE CODE AS AMENDED

DECLARED VALUE EXCESS-PROFITS TAX

Net income for declared value excess-profits tax computation, as adjusted		$28,249,803.71
Less: 10% of 270,000,000.00, value of capital stock as shown on your capital stock tax return for year ended June 30, 1942	$27,000,000.00	
564 Dividends received credit (85% of $1,212,105.27)	1,030,289.48	28,030,289.48
Net income subject to declared value excess-profits tax		$ 219,514.23
Declared value excess-profits tax, 6.6% of $219,514.23		$ 14,487.94

Exhibit A, Annexed to Petition.

Correct declared value excess-profits tax liability	$	14,487.94
Declared value excess-profits tax assessed: Original, Account No. 430004		None
Deficiency of declared value excess-profits tax	$	14,487.94

565

COMPUTATION OF TAX

INTERNAL REVENUE CODE AS AMENDED

INCOME TAX

566

Normal Tax:

Net income for declared value excess-profits tax computation as adjusted (Schedule 1)		$28,249,803.71
Add: Interest on obligations of certain instrumentalities of the United States issued prior to March 1, 1941		4,171.20
		567
Total		$28,253,974.91
Less: Declared value excess-profits tax		14,487.94
Net income		$28,239,486.97
Less: Interest on certain obligations of the United States and its instrumentalities issued prior to March 1, 1941		4,171.20
Adjusted net income		$28,235,315.77

Exhibit A, Annexed to Petition.

568

Less: Income subject to excess profits tax (Schedule 5)	$12,651,155.86		
Dividends received credit (85% of $1,212,105.27)	1,030,289.48	13,681,445.34	
Normal-tax net income			$14,553,870.43
Normal tax, 24% of $14,553,870.43			$ 3,492,928.90

569

Surtax:

Net income, supra			$28,239,486.97
Less: Income subject to excess profits tax (Schedule 5)	$12,651,155.86		
Dividends received credit (85% of $1,206,605.27)	1,025,614.48	13,676,770.34	
Surtax net income			$14,562,716.63
Surtax, 16% of $14,562,716.63			$ 2,330,034.66

570

Normal tax, supra			3,492,928.90
Total income tax			$ 5,822,963.56
Less: Credit for income taxes paid to a foreign country			110,540.58
Correct income tax liability			$ 5,712,422.98
Income tax assessed:			
Original, Account No. 430004			5,954,917.35
Overassessment of income tax			$ 242,494.37

Exhibit A, Annexed to Petition.

Schedule 3 571

ADJUSTMENTS TO EXCESS PROFITS NET INCOME

Excess profits net income computed under income credit method, as disclosed by return		$26,290,469.61
Additions:		
(a) Income adjustments per Schedule 1	$742,761.90	
(b) Dividends received credit adjustment 572	4,160.00	746,921.90
Total		$27,037,391.51
Deductions:		
(c) Declared value excess-profits tax		14,487.94
Excess profits net income computed under income credit method, as adjusted 573		$27,022,903.57

Exhibit A, Annexed to Petition.

574 Schedule 3A

EXPLANATION OF ADJUSTMENTS

(a) These adjustments are explained in Schedule 1A, supra.

(b) Dividends received credit adjustment has been decreased from $[illegible]16,265.27 to $[illegible]212,105.27 by reason of the elimination therefrom of dividend in the amount of $4,160.00 received from Russell and Company and erroneously reported as dividend received from domestic corporation. See explanation of adjustments (h) and (m),
575 Schedule 1A, supra.

(c) Deduction is allowed for declared value excess-profits tax as determined in Schedule 2, supra.

Credit for income taxes paid to a foreign country has been increased from $13,042.52 to $122,084.73, computed in accordance with the provisions of Sections 131 and 729 of the Internal Revenue Code.

Excess profits credit based on income has been increased from $12,327,211.54 to $12,511,744.23, the details of which have been furnished you heretofore.

576 Unused excess profits credit adjustment has been decreased from $2,649,602.80 to $1,855,003.48, computed as follows:

Year 1940		
Excess profits credit based on income, as determined	$12,504,488.97	
Excess profits net income, as determined	11,845,792.33	
Carryover of unused excess profits credit to the taxable year 1942		$ 658,696.64

Exhibit A, Annexed to Petition.

577

Year 1941		
Excess profits credit based on income as determined	$12,504,488.97	
Excess profits net income, as determined	11,308,182.13	
Carryover of unused excess profits credit to the taxable year 1942		1,196,306.84
Total unused excess profits credit adjustment for the taxable year 1942		$ 1,855,003.48

578

579

Exhibit A, Annexed to Petition.

580 Schedule 4

COMPUTATION OF ADJUSTMENT DUE TO APPLICATION OF SECTION 734

Net income for the taxable year 1939 as disclosed by report of examination dated May 31, 1947		$14,499,223.18
Deduct:		
581 Declared value excess-profits tax liability	$ None	
Interest on United States obligations	5,275.29	5,275.29
Adjusted Net Income		$14,493,947.89
Tentative tax at 19%		$ 2,753,850.10
Less: 14.025% of domestic dividends	$191,549.70	
2.5% of dividends paid credit	232,622.27	424,171.97
582 Normal tax		$ 2,329,678.13
Less: Foreign tax credit		235,958.46
Income tax liability		$ 2,093,719.67
Income tax previously assessed		2,072,269.61
Increase in income tax		$ 21,450.06
Interest from due date of filing return to March 15, 1943		3,861.01
Increase in income tax and interest		$ 25,311.07

Exhibit A, Annexed to Petition.

Schedule 5 583

COMPUTATION OF EXCESS PROFITS TAX

INTERNAL REVENUE CODE AS AMENDED

Excess profits net income computed under income credit method as adjusted (Schedule 3)		$27,022,903.57
Less: Specific exemption	$ 5,000.00	
Excess profits credit based on income, as adjusted 584	12,511,744.23	
Unused excess profits credit adjustment, as revised	1,855,003.48	14,371,747.71
Adjusted excess profits net income		$12,651,155.86
Excess profits tax imposed, 90% of $12,651,155.86		$11,386,040.27
Less: Credit for income taxes paid to a foreign country 585		122,084.73
Excess profits tax after foreign tax credit		$11,263,955.54
Amount due to application of section 734 (Schedule 4)		25,311.07
Correct excess profits tax liability		$11,289,266.61

Exhibit A, Annexed to Petition.

586 Excess profits tax assessed:

Original, Account No. 400901	$10,164,747.22	
Less: Credit previously allowed under section 3806(b)	396,000.00	9,768,747.22
Deficiency of excess profits tax		$ 1,520,519.39

CREDIT FOR POST-WAR REFUND OF EXCESS PROFITS TAX

587 Excess profits tax imposed, supra		$11,386,040.27
Credit allowable under section 780(a) of the Internal Revenue Code (10% of $11,386,040.27)		$ 1,138,604.03

Limitation under section 781(d):

Excess profits tax after foreign tax credit, supra		$11,263,955.54
Less: 588 Excess profits tax payable if rate were 81%:		
Tax at 81% rate (81% of $12,651,155.86)	$10,247,436.25	
Less: Credit for income taxes paid to a foreign country	120,460.31	10,126,975.94
Post-war credit allowable		$ 1,136,979.60

EXHIBIT B, ANNEXED TO PETITION.

589

COMPUTATION OF ADJUSTMENT OF ABNORMAL DEDUCTIONS UNDER SECTION 711(b)(1)(J)(ii) OF THE INTERNAL REVENUE CODE

"OTHER DEDUCTIONS AUTHORIZED BY LAW" FROM THE PURCHASE AND SALE OF CORN FUTURES CONTRACTS

	1936	1937	1938	1939
1932	$ 27,943.75	$	$	$
1933	*27,531.25*	*27,531.25*		
1934	3,450.00	3,450.00	3,450.00	
1935	*56,768.75*	*56,768.75*	*56,768.75*	*56,768.75*
1936		165,532.27	165,532.27	165,532.27
1937			*590,339.35*	*590,339.35*
1938				815,462.57
Total for four years	*52,906.25*	*84,682.27*	*478,125.83*	332,886.74
Average for four years	*13,226.56*	21,170.57	*119,531.46*	83,471.69
Actual Deductions	165,532.27	*590,339.35*	815,462.57	424,437.54
125% of Average	*16,533.20*	26,463.21	*149,414.33*	104,339.61
(A) Abnormal Deduction	165,532.27	—	815,462.57	320,097.93
Actual Deductions	165,532.27	*590,339.35*	815,462.57	424,437.54
Deductions for 1940	*680,587.39*	*680,587.39*	*680,587.39*	*680,587.39*
(B) Maximum Allowance—1940	165,532.27	—	815,462.57	424,437.54
1940—Lower of (A) or (B)	165,532.27		815,462.57	320,097.93
Actual Deductions	165,532.27	*590,339.35*	815,462.57	424,437.54
Deductions for 1941	*180,056.23*	*180,056.23*	*180,056.23*	*180,056.23*
(B) Maximum Allowance—1941	165,532.27	—	815,462.57	424,437.54
1941—Lower of (A) or (B)	165,532.27	—	815,462.57	320,097.93
Actual Deductions	165,532.27	*590,339.35*	815,462.57	424,437.54
Deductions for 1942	109,969.38	109,969.38	109,969.38	109,969.38
(B) Maximum Allowance—1942	55,562.89	—	705,493.19	314,468.16
1942—Lower of (A) or (B)	$ 55,562.89	$ —	$705,493.19	$314,468.16

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Amount of deduction to be disallowed in determining:

(1) Excess Profits Credit Based on Income for 1942 — $314,468.16

(2) Unused Excess Profits Credit Adjustment for 1942 from 1941 — 314,468.16

(3) Unused Excess Profits Credit Adjustment for 1942 from 1940 — 314,468.16

[Figures in italics were red in original.]

Answer.

592

[SAME TITLE.]

Comes now the Commissioner of Internal Revenue, through his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed herein, admits and denies as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the petititon.

593

3. Admits that the taxes in controversy are for the calendar year 1942, representing deficiencies claimed by the Commissioner of Internal Revenue of excess profits tax in the sum of $1,520,519.39 and declared value excess-profits tax in the sum of $14,487.94. Denies the remaining allegations contained in paragraph 3 of the petition.

4. (a) to (l), incl. Denies the allegations of error contained in subparagraphs (a) to (l), inclusive, of paragraph 4 of the petition.

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5. (a) (1). For lack of information upon which to form a belief, denies the allegations contained in subparagraph (a) (1) of paragraph 5 of the petition.

5. (a) (2) to (5), incl. Denies the allegations contained in subparagraphs (a) (2) to (5), inclusive, of paragraph 5 of the petition.

5. (a) (6) to (10), incl. For lack of information upon which to form a belief, denies the allegations contained in subparagraphs (a) (6) to (10), inclusive, of paragraph 5 of the petition.

5. (a) (11) and (12). Denies the allegations contained in subparagraphs (a) (11) and (12) of paragraph 5 of the petition for the reason that the matter contained therein is argumentative. 595

5. (a) (13). Denies the allegations contained in subparagraph (a) (13) of paragraph 5 of the petition.

5. (b) (1) to (6), incl. For lack of information upon which to form a belief, denies the allegations contained in subparagraphs (b) (1) to (6), inclusive, of paragraph 5 of the petition.

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5. (c) (1) and (2). For lack of information upon which to form a belief, denies the allegations contained in subparagraphs (c) (1) and (2) of paragraph 5 of the petition.

5. (c) (3) to (5), incl. Denies the allegations contained in subparagraphs (c) (3) to (5), inclusive, of paragraph 5 of the petition.

5. (d) (1) to (4), incl. Denies the allegations contained in subparagraphs (d) (1) to (4), inclusive, of paragraph 5 of the petition. 597

5. (e) (1) to (4), incl. Denies the allegations contained in subparagraphs (e) (1) to (4), inclusive, of paragraph 5 of the petition.

5. (f) (1). Denies the allegations contained in subparagraph (f) (1) of paragraph 5 of the petition.

5. (g) (1) to (5), incl. For lack of information upon which to form a belief, denies the allegations contained in subparagraphs (g) (1) to (5), inclusive, of paragraph 5 of the petition.

Answer.

598 5. (h) (1), (i) (1) and (j) (1). Denies the allegations contained in subparagraphs (h) (1), (i) (1), and (j) (1) of paragraph 5 of the petition.

5. (k) (1) to (5), incl. For lack of information upon which to form a belief, denies the allegations contained in subparagraphs (k) (1) to (5), inclusive, of paragraph 5 of the petition.

5. (l) (1) to (5), incl. For lack of information upon which to form a belief, denies the allegations contained in subparagraphs (l) (1) to (5), inclusive, of paragraph 5
599 of the petition.

Denies generally and specifically each and every allegation of the petition not hereinbefore admitted, qualified or denied.

WHEREFORE, it is prayed that the determination of the Commissioner be approved and appeal denied.

(Signed) CHARLES OLIPHANT
HDT

600 CHARLES OLIPHANT,
Chief Counsel,
Bureau of Internal Revenue.

OF COUNSEL.

R. P. HERTZOG,
Division Counsel.
WALT MANDRY,
Special Attorney,
Bureau of Internal Revenue.

[SAME TITLE.]

Jay O. Kramer, Esq., and *Samuel A. McCain, Esq.*, for the petitioner.

Walt Vandry, Esq., for the respondent.

OPPER, *Judge:* Respondent determined deficiencies for the year 1942 in excess profits tax and declared value excess profits tax of $1,520,519.39 and $14,487.94, respectively. 602 Petitioner does not contest certain adjustments. The issues remaining are:

1 (a). Whether the profits and losses sustained by petitioner in the years 1939 to 1942, inclusive, on the purchase and sale of corn futures constituted capital gains and losses under section 117, and thus a proper elimination from base period losses for excess profits tax purposes.

1 (b). Whether losses sustained by petitioner from transactions in corn futures are subject to the wash sales 603 provisions of section 118.

1 (c). If the answer to 1 (a) is in the negative, whether the net loss on corn futures transactions sustained by petitioner in the base period year 1939 constituted an abnormal deduction under section 711 (b) (1) (J) (ii).

2. Whether dividends declared by foreign corporations payable to petitioner in foreign currency in the base period year 1939 were so blocked by foreign exchange restrictions as not to constitute taxable income in that year.

604 3. Whether sums paid out as "salaries" and included as part of cost of sales are deductible, although in a later year it was discovered that the amounts had been embezzled and reimbursement from insurance was subsequently received.

4. Whether, in computing petitioner's unused excess profits credit carry-over from 1941 to 1942, the provisions of Section 721 apply so as to exclude 1941 abnormal income from excess profits net income of that year, even though petitioner had no excess profits tax liability for 1941.

605 Some of the facts have been stipulated. The record in *Corn Products Refining Co.*, 16 T. C. 395, has been incorporated by agreement as evidence in this proceeding.

Findings of Fact.

The stipulated facts in this proceeding, and the findings of fact in *Corn Products Refining Co.*, 16 T. C. 395, are hereby found accordingly.

Petitioner is a New Jersey corporation with its principal office in New York City. It filed its 1942 return with
606 the collector of internal revenue for the second district of New York.

Issue 1.

Petitioner is engaged in the manufacture and sale of corn products, including starches, sugar, syrups, oils and feeds. The principal product obtained by petitioner from raw corn is starch. Cerelose, which is one of petitioner's major products, is a refined sugar derived from starch which competes with cane and beet sugar. Petitioner's plants have a daily grind capacity of 170,000 bushels, and

its raw corn storage capacity of 2,303,000 bushels enables it to keep on hand somewhat less than a three-weeks' supply. In the years 1938 to 1942, inclusive, petitioner made purchases of raw corn aggregating 35,650,773, 36,806,869, 37,222,409, 54,079,173, and 60,761,513 bushels, respectively. 607

Petitioner's sales policy has been to contract for shipments within 30 days at a specified tentative price, with the understanding that the final price shall be the contract price or market price at date of delivery, whichever is lower. When a customer refuses to accept delivery of cerelose or feed, it has been petitioner's practice to cancel the unexecuted portion of the order.

Petitioner's general sales policy of contracting for 30-day shipments has had exceptions and variations, including the following: In 1927, petitioner entered into a contract with the Huron Milling Company, and in 1932 it entered into a contract with the Keever Starch Company, under both of which contracts petitioner was required to manufacture and deliver large quantities of starch for a period of 15 years, the price in both contracts being dependent upon a number of factors, including the price of corn and labor. The Huron contract was modified on June 1, 1942, and extended for an additional 10 years. In May 1939 petitioner entered into a contract with Eastern Milling Co., under which petitioner was required to deliver quantities of feed each month until May 1940, with a guarantee as to price. On January 15, 1940, petitioner invited all buyers to submit on or prior to January 20, orders for cerelose to be delivered as late as June 30, 1940, buyers being guaranteed the lower of the January 15 price or the price in effect at date of delivery, and being allowed to cancel all or part of their orders. Petitioner received many orders in response to that invitation and its sales of cerelose at that time approximated 2,000,000 bags. Members of the canning industry on the Pacific Coast have been permitted to call on petitioner for cerelose for de 608 609

610 livery in more than 30 days, with price guarantees and allowance for cancellations.

For a number of years it has been petitioner's custom to purchase and sell corn futures contracts through members of a recognized Commodity Exchange. A corn future is a contract calling for the delivery at a stated time, within eleven months or less, of 5,000 bushels of corn or some multiple thereof, of a stated quality, at a stated price. Petitioner engaged in futures transactions as a part of its corn buying program and as the most economical method of obtaining an adequate supply of raw
611 corn in view of its limited storage facilities and the expense of increasing those facilities sufficiently to take care of its needs. Purchases of futures were made when the price of corn was advantageously low. Petitioner took delivery of corn on some contracts, but it usually sold most of its futures in early summer if it then appeared that there would be no shortage of corn and no great danger of increased prices. If the crop was poor or there was danger of a price increase it sold its futures gradually as it bought corn for grinding. Petitioner would begin to acquire additional futures contracts at harvest time each year.

612 The corn futures contracts were not subject to depreciation and were not included in inventory. Petitioner's raw corn inventory account was affected only when petitioner took delivery under a futures contract. Profits or losses on futures were shown in a "Corn Miscellaneous" account. The net gain or loss for each year was debited or credited to cost of sales, and treated as a reduction or addition to cost of goods sold.

During late 1939 and early 1940 petitioner maintained a long position in corn futures contracts of from 7,000,000 to 8,000,000 bushels. In 1940 the Commodity Exchange Authority formally charged petitioner with speculating in grain on the ground that it had a long position in excess

by more than 2,000,000 bushels of the amount it required for hedging. At a hearing petitioner took the position that its futures were not in excess of its needs and that the contracts it held were necessary to cover the products which it expected to market over a period of 15 to 18 months. In demonstrating its needs petitioner submitted evidence as to its unfilled orders, its sales commitments, its contracts with the Huron Milling Company and the Keever Starch Company, and the estimated number of bushels of corn that would be required to meet such commitments. Petitioner relied also upon weekly and daily reports which it had filed with the Authority giving information as to its position with respect to grain futures. Petitioner had included in those reports, among other matters, detailed information as to its transactions in grain, and its purchase and sales commitments for grain, or grain products, and it stated in such reports that its futures were classifiable in character as hedging, rather than as speculative transactions. Petitioner was upheld in its contentions in the proceeding before the Commodity Exchange Authority, and the action was dismissed. 613 614

The parties have stipulated the net gain or loss from the purchase and sale of corn futures in each year from 1932 to 1942, inclusive, the monthly purchases of bushels of raw corn by petitioner from January 1938, to December 1942, the monthly purchases and sales of corn futures during the same period including the number of contracts and number of bushels, the monthly purchases of corn futures from October 1937 to December 1942 under which delivery was taken at maturity dates, the monthly sales of corn futures from January 1938 through December 1942, including the number of contracts and number of bushels, and the stock on hand and unfilled orders for cerelose and for feed at the beginning of each month during the year 1942. 615

The parties have stipulated for each of the years 1939

616 and 1942 the separate gain or loss to petitioner resulting from the sale of corn futures held for not more than six months and from the sale of corn futures held for more than six months, as computed both with and without the application of section 118 of the Internal Revenue Code.

During 1942 petitioner had gross sales of more than $131,000,000 and gross profits from sales of more than $35,000,000. Its net loss from the purchase and sale of corn futures was $109,969.38. At the beginning and end of that year its inventory (including raw corn and processed products valued at cost or market, whichever was lower) was approximately $7,650,000 and $5,900,000, re-
617 spectively.

There was no significant change in petitioner's method of doing business between December 31, 1940, and December 31, 1942.

Petitioner's purchases of corn futures did not constitute speculative transactions for profit, but were consummated in order to obtain business protection and to insure the profitable conduct of its business.

Issue 2.

618 During all periods material to this proceeding the books and records of petitioner and its subsidiaries were kept on an accrual basis.

During 1939 Maizena, Brazil, S. A., a Brazilian corporation, hereinafter called Maizena, and Refinacoes De Milho, Brazil, S. A., a New Jersey corporation, hereinafter called Refinacoes, were petitioner's wholly-owned subsidiaries. In that year Refinacoes owed Maizena money for commissions. On the books of Maizena the commissions were credited to profit and loss, and debited to its accounts receivable account for Refinacoes. Maizena paid taxes to Brazil upon the commissions.

In December 1938 Maizena declared a dividend, payable January 13, 1939, and set up on its books an account payable to petitioner in the amount of 2,175,000 Brazilian milreis. In June 1939 petitioner debited an accounts receivable account known as blocked account, Maizena, Brazil, S. A., and it credited blocked income which was a deferred credit income account. Petitioner used a rate of exchange of 5.95 cents per milrei. The Internal Revenue Bulletin stated that the rates of exchange acceptable as the prevailing current or market rates were 5.86 cents per milrei as of December 30, 1938, and 6.058 cents per milrei as of December 30, 1939. There was also an unofficial rate of exchange in Brazil. 619 620

Petitioner was interested at that time in selling milreis for dollars to foreign exchange dealers in New York, if favorable rates were obtainable. There were restrictions in Brazil in 1939 with respect to transmitting funds out of that country. The record does not disclose the nature or extent of such restrictions.

In 1939 petitioner received a portion of the above dividend in the amount of $4,862.31, which was the dollar equivalent of 100,649.9 milreis. That payment was made by draft, payable in petitioner's favor, and drawn by the Bank of Brazil upon the Guaranty Trust Co. The record does not disclose the circumstances under which such drafts were procured. Petitioner received the balance of the dividend in 1940. Upon receiving payment petitioner debited its cash and blocked income accounts, and credited income and its blocked account, Maizena, Brazil, S. A. 621

During 1939 petitioner was a major stockholder in several Italian companies, including S. A. Anticromos Dott Aldo Volpino-Milan, hereinafter called Anticromos, S. A. Ligure Industriale Commerciale-Genoa, hereinafter called Ligure, S. A. Prodotti del Mais-Milan, hereinafter called Prodotti, and Fabbriche Riunite Amido Glucosia Destrina-Milan, hereinafter called Fabbriche. Petitioner had

622 wholly-owned Italian subsidiaries, including Societe Finanziaria Agricola Italo-Americana-Milan, hereinafter called Finanziaria.

In May 1939 dividends in lire were declared by the above corporations and set up on their books as accounts payable to petitioner, as follows: Anticromos—142,920; Ligure—565,763; Prodotti—1,643,718; and Fabbriche—2,143,926 lire. In that year petitioner entered the above amounts on its books by debiting its accounts receivable maintained for the above corporations which were called blocked accounts, and by crediting its blocked income account, which was a deferred credit to income. Petitioner
623 used a rate of 5.2625 cents per lire which was the published rate of exchange on the date of declaration of dividends.

The dividends declared by Anticromos and Ligure were paid in the same year to petitioner's subsidiary, Finanziaria. Finanziaria credited petitioner's account and accrued interest which was also credited. An undisclosed portion of the dividends received by Finanziaria and an undisclosed portion of the dividends declared by Prodotti and Fabbrichi were transferred on undisclosed dates to Italian banks for petitioner's credit. The record does
624 not disclose when the Italian dividends which were declared in 1939 payable to petitioner, were received by the latter.

Petitioner was anxious at a reasonable price to realize dollars for its lire, and it was able in New York to sell to foreign exchange dealers some of the lire in its bank accounts at unofficial rates. In November and December 1939 petitioner converted the sums of 210,000 and 200,000 lire into dollars at an average rate of approximately $.021 per lira. The latter lire would come out of dividends declared in 1936, if treated on a first in, first out basis. The record does not disclose the nature or extent of the ex-

change restrictions in Italy on transmitting funds out of 625
that country.

Petitioner's consistent bookkeeping practice, in treating a foreign dividend payable to it and blocked by exchange restrictions, has been to record the dividend as a receivable at the prevailing rate of exchange with a credit to deferred income, and to treat the amount as income in the year of actual receipt in the United States. Petitioner has adhered to that procedure following an internal revenue agent's suggestions in connection with examinations of its returns for certain years prior to the period here involved.

Petitioner's 1939 tax return reported as income the por- 626
tion of the Maizena dividend received in that year. It did not report the remainder of the Maizena dividend or the dividends declared in that year by the Italian corporations. That method of reporting was in accordance with petitioner's practice, in 1939 and subsequent years, of reporting items of foreign income, blocked by exchange restrictions, at the time of actual receipt, and treating them as capital gain items with a cost basis of zero.

The dividends in controversy were not unqualifiedly subject to petitioner's demand in the year 1939. In 1939 there was no market for the unconverted Brazilian milreis 627
and the Italian lire here in controversy, and no one could form an opinion as to their values in that year.

ISSUE 3.

During 1942 petitioner paid out as "salaries" the gross sum of $37,620.44. The net amounts so paid were in fact embezzled by the paymaster and were not received by the employees designated on the checks as payees. The total sum of $37,620.44 was deducted in good faith as part of cost of sales. In addition, based upon the above "salaries," petitioner withheld and paid to the Treasury, as the em-

628 ployer's portion of Federal Old Age Benefit, the amount of $357.39, and as Federal Unemployment Insurance the amount of $676.55. The latter sums were deducted in good faith.

In 1948 petitioner discovered the embezzlements and made a claim for reimbursement from its surety under its policy of insurance which was in effect at all times. In 1949, under the terms of its policy, petitioner received from the surety reimbursement of the above sum of $37,620.44, without interest.

Respondent's notice of deficiency, mailed on December 14, 1948, did not disallow any of the above sums. At the
629 hearing, respondent claimed an additional deficiency based upon the disallowance of the amount of $37,620.44 as a deduction for 1942.

ISSUE 4.

Petitioner had no excess profits tax liability for 1941, and in so determining, respondent excluded from petitioner's excess profits net income for that year the sum of $436,945.36 as abnormal income under section 721 of the Internal Revenue Code. Respondent's computation of pe-
630 titioner's unused excess profits tax credit carry-over from 1941 to 1942 did not exclude from petitioner's excess profits net income for 1941 the said amount of $436,945.36.

OPINION. 631

I.

Issue 1 (a):

Although perhaps not conforming technically to the definition of a hedge,[1] it seems indisputable as our findings show that petitioner's practice of purchasing corn futures was an integral part of its manufacturing business. *Ben Grote*, 41 B. T. A. 247; see *Kenneth S. Battelle*, 47 B. T. A. 117, 127. It would hence be anomalous to view them as purely speculative transactions of a capital nature,[2] especially considering that this is "largely a factual question," *Kenneth S. Battelle, supra*, 125, and the burden here is on petitioner to show that it incorrectly treated the losses as ordinary on its original tax returns. Only by so doing can it succeed in maintaining its present position that losses in the base period were improperly employed to arrive at a smaller income than actually received. 632

Futures contracts need not be concurrent with spot transactions in order to be a hedge. G. C. M. 17322 (1936), XV-2, C. B., 151. In neither *Tennessee Egg Co.*, 47 B. T. A. 558, nor *Estate of Dorothy Makransky*, 5 T. C. 397, affirmed (C. A. 3), 154 F. 2d 59, were there future commitments against which the futures purchased could operate as an offset. In the former, petitioner's failure to 633

[1] "* * * to hedge, i.e., to insure themselves against loss by unfavorable changes in price at the time of actual delivery of what they have to sell or buy in their business; * * *." *United States* v. *New York Coffee & Sugar Exchange, Inc.*, 263 U. S. 611. See Patterson, "Hedging and Wagering on Produce Exchanges," (1931); 40 Yale L. J., 843, 846.

[2] "* * * For example, if a manufacturer or processor of raw material is short on inventory and makes sales of his finished products for forward delivery, the appropriate hedging transaction in that instance would be the purchase of raw material futures at or about the time he makes the sale." *Stewart Silk Corp.*, 9 T. C. 174, 178."

634 sustain its burden of proof is emphasized, and in the latter the venture in question was an isolated transaction and not a component of a regular practice of balancing transactions systematically conducted. Neither case is authority militating against our conclusion that petitioner's losses on its futures contracts were properly treated as ordinary losses. *Stewart Silk Corp.*, 9 T. C. 174, 179.

II.

ISSUE 1 (b).

635 Petitioner's alternative contention that Internal Revenue Code, section 118, forbade deduction of these losses as wash sales must be rejected on authority of *Corn Products Refining Co.*, 16 T. C. 395, a prior decision involving this same petitioner from which we see no reason to depart.

III.

ISSUE 1 (c).

636 That the future contracts gave rise to a separate class of losses, however, we think admits of little doubt. Although related to petitioner's cost of operations, they cannot be considered an inventory item, *Modesto Dry Yard, Inc.*, 14 T. C. 374, nor, since the grain itself was never acquired, a part of the cost of goods sold. See *Tennessee Egg Co., supra; Estate of Dorothy Makransky, supra; Modesto Dry Yard, Inc., supra.* Being losses on transactions comparable to hedges, they are strictly similar only to other hedge transactions. We conclude that, being greater than 125 per cent of previous items of the same character, the losses are subject to treatment under section 711 (b) (1) (J) (ii). *Green Bay Lumber Co.*, 3 T. C.

824; *Welch Grape Juice Co.*, 9 T. C. 786; *Mine and Smelter Supply Co.*, 10 T. C. 1179. 637

For the first time on brief, respondent seeks to invoke the provisions of section 711 (b) (1) (K). Assuming that the ordinary burden of disclosure rested upon petitioner in that state of the record, but see *Green Bay Lumber Co., supra; Wentworth Manufacturing Co.*, 6 T. C. 1201, it has in our view been adequately met. There is no apparent causal connection between the losses on futures and the gross income or deductions of petitioner's operations. And the abnormal losses do not seem to have been a consequence of a change in the manner and scope of petitioner's operations. *R. C. Harvey Co.*, 5 T. C. 431; *Laredo Bridge Co.*, 7 T. C. 17. 638

If there are more obscure connections between the contested losses and any of the enumerated aspects of petitioner's activities as described in section 711 (b) (1) (K), it was incumbent on respondent to give some adequate notice of his proposed position. A taxpayer cannot be expected to negative every possible element of some hypothetical defense. *Wentworth Manufacturing Co., supra.*

In this respect respondent's determination was erroneous.

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IV.

Issue 2.

On petitioner's claim that it understated its 1939 income by failing to report dividends received in Brazil and Italy, we conclude that the burden of proof which rested on petitioner has not been discharged. It is not sufficient for the dividends to have been received in foreign territory. They must have been convertible into American dollars before petitioner could be charged with them as income. *Foundation Co.*, 14 T. C. 1333. This was one of

640 the issues in the case and proof of convertibility was requisite under the circumstances. *International Mortgage & Investment Corp.*, 36 B. T. A. 187. In *Weil* v. *Commissioner* (C. A. 2), 150 F. 2d 950, the taxpayer had the burden of proving the absence of free convertibility, rather than as here, its presence, and failed to carry it. Petitioner's failure to sustain its burden in this respect is the basis for our conclusion contained in the findings that there was no market for the foreign exchange in dispute.

In fact, what evidence there is indicates that these payments were actually blocked by the respective exchange restrictions of the countries involved. The facts show
641 that except for a small portion actually converted in some manner not disclosed, and not here in controversy, the entire amount was credited to deferred income. This was stated to be petitioner's method of dealing with blocked funds: "If the foreign dividend payable to us was blocked by exchange restrictions our practice was to book the dividend as a receivable at the prevailing rate of exchange, offset by a credit to the deferred income, taking it into income in the year it was received." When the dividends were "received," that is, when they were exchanged into dollars and transferred to the United States—all of which
642 occurred subsequent to the year in issue—and not until then were they recorded as income. On this issue the deficiency is sustained.

V.

ISSUE 3.

We do not view the issue affirmatively raised by respondent as one directly involving the deductibility of an embezzlement loss. At the close of the taxable year in question, 1942, from all that was then known, petitioner correctly deducted the amounts in issue as compensation

for services. The fact that six years later it was discovered that these items had never been paid to the employees but had been misappropriated and that a year after that petitioner was able to collect from its insurer would, as in *E. B. Elliott Co.*, 45 B. T. A. 82, be pertinent facts for consideration if the year 1942 could be dealt with in reliance upon them. But as we have frequently reiterated, the *Elliott* rule no longer applies. *Standard-Tilton Milling Co.*, 3 T. C. 1026; *Taylor Instrument Companies*, 14 T. C. 388. 643

Only by reviewing the year in controversy in the light of facts discovered many years later can petitioner's position be attacked. This as we have said we are no longer in a position to do. *Schwabacher Hardware Co.*, 45 B. T. A. 699, was decided after *E. B. Elliott Co., supra*, and on its authority, and before *Standard-Tilton Milling Co., supra*. For that reason it has no application to these proceedings. And in *Samuel M. Felton*, 5 T. C. 256, the burden was not upon respondent, as it is here, but upon petitioner. Under the *Security Flour Mill*[3] rule, respondent has not even closely approximated the discharge of the burden which he is required to bear. On this issue, decision will be for petitioner. 644

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ISSUE 4.

The final question is controlled by *San Francisco Stevedoring Co.*, 8 T. C. 222, as petitioner concedes. It attacks the conclusion there reached and urges us to depart from it. This we are unwilling to do. On the authority of that case, the deficiency is sustained in this respect.

Decision will be entered under Rule 50.

Entered June 30, 1952.

[3] *Security Flour Mills v. Commissioner*, 321 U. S. 281.

646

Supplemental Opinion.

20 T. C. No. 68

[SAME TITLE.]

Docket No. 22074 Promulgated May 28, 1953.

Computation of amount of abnormality under section 711(b)(1)(J)(ii) on account of petitioner's corn futures transactions, in which it had net gains in some previous years and net losses in others, 647 *held* to require consideration only of annual net losses on such transactions.

Jay O. Kramer, Esq., Samuel A. McCain, Esq., for the petitioner.

Walt Mandry, Esq., for the respondent.

OPPER, *Judge*: This proceeding was originally decided by Memorandum Opinion entered June 30, 1952. Upon the recomputation under Rule 50, it became evident that an issue not previously perceived by either party remained to be disposed of. Leave was granted to reopen 648 the proceeding for the disposition of that question.

The issue is a narrow and technical problem as to the correct computation to be employed for excess profits tax purposes under section 711 (b) (1) (J). In our prior opinion we held that petitioner's losses from dealings in corn futures, being comparable to hedging, were a separate class of deduction and were accordingly entitled to be disregarded where they exceeded 125 per cent of the losses for the four previous years under subdivision (ii). It develops that the losses from hedging transactions were to some extent offset by gains from similar transactions and it is the proper employment of such figures in the

recomputation as to which the parties are now in disagreement. 649

In two of the four years prior to 1939, the only base period year which was in issue, there were in fact excesses of gains over losses. Respondent contends that only the other two years, where the net result of the hedging operations was a loss, should be given effect. Petitioner's approach is in the alternative, either that only the losses should be considered without regard to offsetting gains in any year, or that all four years should be included with the net gain years included as well as those showing a net loss. The submitted figures follow: 650

	Respondent's computation using only (net losses)	Petitioner's computation No. 1, using (net losses) and net gains	Petitioner's computation No. 2, using only (gross losses)
Base period year (1939)	($424,437.54)	($424,437.54)	($691,853.14)
4 previous taxable years:			
1935	0	56,768.75	(66,682.50)
1936	(165,532.27)	(165,532.27)	(248,063.52)
1937	0	590,339.35	(2,050.00)
1938	(815,462.57)	(815,462.57)	(864,606.32)
Total of four years	($980,994.84)	($333,886.74)	($1,181,402.34) 651
Annual average	(245,248.71)	(83,471.69)	(295,350.59)
125% of average	(306,560.89)	(104,339.61)	(369,188.24)
Excess of 1939 over 125% of average of 4 previous years	($117,876.65)	($320,097.93)[1]	($322,664.90)

While the parties agree that the question is novel, we think the principle adopted by respondent is correct. Starting with the base period year deduction it

[1] Because of the limitation imposed by section 711 (b) (1) (K) (iii), the claimed adjustment for computation of the 1942 excess profits credit was reduced to $314,468.16.

652 seems to us inescapable that $424,437.54 representing as it does the net loss rather than the larger figure of the gross loss without accounting for offsetting gains is necessarily the correct one. This proceeds in part from the provisions of section 711 (b) (1) (K), the purpose of which is to insure that abnormal deductions shall not be disallowed if they are connected with offsetting items of gross income. See *Frank H. Fleer Corporation*, 10 T. C. 191. In fact, we held here in the prior opinion that because no offsetting items of income were apparently involved, the provisions of subdivision (K) did not preclude treatment of the deduction as an abnormality.
653 It seems to us inconsistent now to suggest that anything but the net figure of the excess of losses over gains can be considered as the correct method of dealing with the loss deduction, bearing in mind the intimate interconnection between subdivisions (J) and (K). *Frank H. Fleer Corporation, supra*, 200.

Turning then to the provisions of 711 (b) (1) (J) (ii) itself,[2] it seems evident that the deductions for the four prior years, being referred to as a "class," are to be treated as coordinate with that for the base period year in question. It follows that these deductions also must
654 be confined to net losses, consisting of the excess of losses over gains.

Under the same provisions it would be anomalous to deal with the results of any of the prior years as "deductions" whereas in this case the net result in several years is not a deduction but a net gain which is in essence an item adding to petitioner's gross income. As to those years it necessarily follows that the loss is non-

---

[2] "(ii) If the class of deductions was normal for the taxpayer, but the deductions of such class were in excess of 125 per centum of the average amount of deductions of such class for the four previous taxable years, they shall be disallowed in an amount equal to such excess."

existent and must accordingly be represented by zero as 655
respondent has done.

We conclude that only the net loss years may be considered as giving rise to "deductions" but since the statute requires an average of the "four previous years," the years in which no net losses occurred must be included in computing the average.

Reviewed by the Court.

Decision will be entered under Rule 50.

(Seal)

656

Decision.

[SAME TITLE.]

Respondent having on June 9, 1953, filed a recomputation of tax for entry of decision as in accordance with Memorandum Findings of Fact and Opinion of the Court, entered June 30, 1952, and Supplemental Opinion of the Court, promulgated May 28, 1953, and petitioner having concurred therein, now, therefore, it is

657

ORDERED and DECIDED: That there are deficiencies in declared value excess-profits tax and excess profits tax for the taxable year 1942 in the amounts of $14,487.94 and $1,221,879.44, respectively.

(Signed) CLARENCE OPPER
Judge

ENTERED JUN 15, 1953

ENTER:

(Seal)

Stipulation of Facts.

658

[SAME TITLE.]

It is hereby stipulated by and between the parties hereto through their attorneys that the following facts may be taken to be true for the purposes of this proceeding without prejudice to the rights of either party to introduce other and further evidence not inconsistent herewith:

659

1. Petitioner is a corporation organized under the laws of the State of New Jersey on February 6, 1906, with its principal office at 17 Battery Place, New York 4, N. Y.

2. Its income tax return for the calendar year 1942 was filed with the Collector of Internal Revenue, Second District of New York.

3. The deficiency letter (a copy of which is annexed to the petition) was mailed to petitioner on December 14, 1948.

660

4. The taxes in controversy for the calendar year 1942 represent deficiencies claimed by respondent in excess profits tax in the sum of $1,520,519.39, and declared value excess profits tax in the sum of $14,487.94, as against a refund claimed by petitioner in Form 843 with the Bureau.

5. Petitioner is a nationally known corporation engaged in the manufacture and sale of corn products, including starches, syrups, oils, and other corn derivatives.

6. Its products are sold to subsidiaries, affiliated companies, and to outside customers. 661

7. It had been the custom of petitioner for a number of years prior to 1942 to purchase corn futures contracts. The net gain or net loss in each of the years from 1932 through 1942 from the purchase and sale of corn futures contracts was as follows:

Year	Net Gain (treated as a reduction of cost of goods sold)	Net Loss (treated as an addition to cost of goods sold)
1932	$	$ 27,943.75
1933	27,531.25	
1934		3,450.00
1935	56,768.75	
1936		165,532.27
1937	590,339.35	
1938		815,462.57
1939		424,437.54
1940	680,587.39	
1941	180,056.23	
1942		109,969.38

662

8. All corn futures contracts purchased and sold during 1938 to 1942 were purchased and sold through members of a recognized Commodity Exchange. 663

9. Such contracts were subject to the rules, regulations and customs of the Commodity Exchange where the trades were made.

10. During the year 1939 petitioner derived a net loss of $424,437.54 from the purchase and sale of corn futures contracts. See Paragraph 7 above and Exhibit 1-A attached hereto.

664 11. This loss of $424,437.54 was treated in petitioner's tax return for the year 1939 as an addition to "Cost of Goods Sold." In its tax returns for prior years the petitioner treated the gains or losses resulting from purchase and sale of corn futures contracts as a reduction of, or as an addition to, cost of sales.

12. During the year 1942 petitioner derived a net loss of $109,969.38 from the purchase and sale of corn futures contracts.

13. This loss of $109,969.38 was treated in petitioner's
665 tax return for the year 1942 as an addition to "Cost of Goods Sold." In its tax returns for prior years the petitioner treated the gains or losses resulting from purchase and sale of corn futures contracts as a reduction of, or as an addition to, cost of sales.

14. The cost of corn futures contracts purchased by petitioner, which contracts were sold during 1939, and which were held for a period of not more than six months, was $92,453.09 less than their selling price (computed without the application of Section 118 of the Internal Revenue Code).

666

15. The basis of the corn futures contracts purchased by petitioner, which contracts were sold during 1939, and which were held for a period of not more than six months, was $2,350.00 more than their selling price when their basis and holding period are computed in accordance with the provisions of Section 118 of the Internal Revenue Code; but nothing contained in this paragraph shall constitute a concession by respondent of the legal conclusions that the corn futures contracts in question were "capital assets" within the meaning of Section 117 of the Internal Revenue Code, or that Section 118 applies thereto. See Exhibit 1-A attached hereto.

16. The cost of corn futures contracts purchased by petitioner, which contracts were sold during 1942, and which were held for a period of not more than six months, was $197,598.13 more than their selling price (computed without the application of Section 118 of the Internal Revenue Code). 667

17. The basis of the corn futures contracts purchased by petitioner, which contracts were sold during 1942, and which were held for a period of not more than six months, was $606.25 less than their selling price when their basis and holding period are computed in accordance with the provisions of Section 118 of the Internal Revenue Code; but nothing contained in this paragraph shall constitute a concession by respondent of the legal conclusions that the corn futures contracts in question were "capital assets," within the meaning of Section 117 of the Internal Revenue Code, or that Section 118 applies thereto. See Exhibit 1-A attached hereto. 668

18. The basis of corn futures contracts purchased by petitioner, which contracts were sold during 1939, and which were held for a period of more than six months, was $516,890.63 more than their selling price when their basis and holding period are computed in accordance with the provisions of Section 117. 669

19. The basis of corn futures contracts purchased by petitioner, which contracts were sold during 1939, and which were held for a period of more than six months, was $242,200.03 more than their selling price when their basis and holding period are computed in accordance with the provisions of Section 118 of the Internal Revenue Code; but nothing contained in this paragraph shall constitute a concession by respondent of the legal conclusions

670 that the corn futures contracts in question were "capital assets" within the meaning of Section 117 of the Internal Revenue Code or that Section 118 applies thereto. See Exhibit 1-A attached hereto.

20. The basis of corn futures contracts purchased by petitioner, which contracts were sold during 1942, and which were held for a period of more than six months, was $87,628.75 less than their selling price when their basis and holding period are computed in accordance with the provisions of Section 117.

671 21. The basis of corn futures contracts purchased by petitioner, which contracts were sold during 1942, and which were held for a period of more than six months, was $75,163.13 less than their selling price when their basis and holding period are computed in accordance with the provisions of Section 118 of the Internal Revenue Code; but nothing contained in this paragraph shall constitute a concession by respondent of the legal conclusions that the corn futures contracts in question were "capital assets" within the meaning of Section 117 of the Internal Revenue Code or that Section 118 applies thereto. See Exhibit 1-A attached hereto.

672

22. The corn futures contracts in question were not subject to depreciation and were not included in inventory.

23. The raw corn storage capacity of petitioner in its own plants during 1942 of 2,303,000 bushels was less than three weeks' supply. The daily grind capacity of petitioner during 1942 was 170,000 bushels.

24. The annexed schedule (marked Exhibit 2-B) shows the monthly purchases of raw corn by petitioner from January, 1938 through December, 1942.

25. The annexed schedule (marked Exhibit 3-C) shows 673
the monthly purchases of corn futures contracts by petitioner from January, 1938 through December, 1942, inclusive, including the number of contracts, the number of bushels and the maturity dates, which futures contracts were disposed of by sale.

26. The annexed schedule (marked 4-D) shows the monthly purchases of corn futures contracts by petitioner from October, 1937 through December, 1942, inclusive, including the number of contracts, the number of bushels and the maturity dates, under which contracts delivery of the corn was taken. 674

27. The annexed schedule (marked Exhibit 5-E) shows the monthly sales of corn futures contracts by petitioner from January, 1938 through December, 1942, inclusive, including the number of contracts and the number of bushels.

28. During the year 1939 Maizena Brasil, S. A., a Brazilian corporation, declared a dividend and set up on its books as an account payable in the amount of 2,175,000$000 Brazilian Milreis to petitioner, its sole stockholder.

29. Various Italian corporations during the year 1939 675
declared dividends and set up on their books as accounts payable amounts aggregating 4,496,327.00 Italian lire to the petitioner, a stockholder thereof.

30. Petitioner converted the sums of 210,000 and 200,000 lire into dollars in November and December, 1939 at an average rate of approximately $.021 per lira. These lire would come out of dividends declared in 1936, if treated on a first in first out basis.

31. Respondent in determining excess profits net income for 1941 excluded therefrom $436,945.36 as constituting

676 abnormal income under Section 721 of the Internal Revenue Code; but in computing the unused excess profit credit carry-over from 1941 to 1942, did not exclude said $436,945.36 from 1941 excess profits net income. Petitioner had no excess profits tax liability for the year 1941.

32. It is agreed that by the use of certain terms in the stipulation and Exhibit 1-A, which connote the purchase and sale of corn futures contracts, the parties have used trade terms and by such use do not intend to suggest the legal consequence flowing from such transactions.

677 33. It is further stipulated that the record of the hearing in the proceeding before this Court between this petitioner and the respondent for the year 1940 (Docket No. 20399) shall be considered evidence in this proceeding without further proof, and

34. It is further stipulated that there were no significant changes in petitioner's method of doing business between December 31; 1940 and December 31, 1942 with respect to its corn futures transactions, its method of accounting therefor, and its established policy and method of selling its products to its customers.

678

35. During the year 1942 petitioner paid out as "salaries" the gross sum of $37,620.44 on which amount there was withheld and paid to the Treasury as Federal Old Age Benefit the amount of $357.39. The total sum of $37,620.44 was deducted in good faith as part of cost of sales, and was not disallowed in the notice of deficiency.

36. In addition there was paid to the Treasury as the employer's portion of Federal Old Age Benefit the amount of $357.39 and as Federal Unemployment Insurance the amount of $676.55 based on the said $37,620.44 which sums were deducted in good faith. The deduction of said two

sums of $357.39 and $676.55 were claimed and allowed by 679
the Commissioner as deductions.

37. The net amounts so paid were in fact embezzled by the paymaster and were not received by the employees designated on the checks as payees.

38. The embezzlements were discovered in 1948 by petitioner and a claim was made for reimbursement from its surety under its policy of insurance which was in effect at all times pertinent.

39. In 1949 petitioner received reimbursement of the 680
above sum of $37,620.44 from the surety under the terms of its policy without interest.

40. Respondent now makes claim to an additional deficiency based on the disallowance of said $37,620.44 as a deduction, and it is agreed that the answer shall be deemed to be amended in accordance with this contention and the contention deemed denied in a reply thereto.

41. During the year 1942 the petitioner had gross sales of over $131,000,000 and gross profits from sales of over $35,000,000. At the beginning and end of that year its 681
inventory (including raw corn and processed products valued at cost or market, whichever was lower) was about $7,650,000 and about $5,900,000, respectively.

42. It is further stipulated that any adjustments required by the decision herein under Section 734 shall be agreed upon by the respective parties and, in the absence of agreement, shall be submitted to the Court on Rule 50.

43. It is further stipulated that any adjustment to income for 1942 required by the decision herein with re-

682 spect to commodity futures transactions in 1942 shall be agreed upon by the respective parties and, in the absence of agreement, shall be submitted to the Court under Rule 50. The respondent now makes claim to any additional deficiency resulting from said adjustment.

JAY O. KRAMER
Attorney for Petitioner
c/o Milton M. Bernard
10 East 40th Street
New York 16, N. Y.

683

(Signed) CHARLES OLIPHANT
RPH.

Chief Counsel,
Bureau of Internal Revenue

684

Amendment to Stipulation.

685

[SAME TITLE.]

It is hereby stipulated by and between the parties hereto through their attorneys that Paragraph 28 of the stipulation submitted herein shall be deleted and in place thereof the following paragraph inserted:

28. During December, 1938 Maizena Brasil, S. A., a Brazilian corporation, declared a dividend, which was payable January 13, 1939, and set up on its books an account payable in the amount of 2,175,000$000 Brazilian Milreis to petitioner, its sole stockholder. 686

JAY O. KRAMER,
Attorney for Petitioner
c/o Milton M. Bernard
10 East 40th Street
New York 16, N. Y.

CHARLES OLIPHANT
RPH
Chief Counsel, 687
Bureau of Internal Revenue

EXHIBIT 4-A, ANNEXED TO STIPULATION OF FACTS.

CORN PRODUCTS REFINING COMPANY

SUMMARY OF ADJUSTMENTS OF CAPITAL GAINS OR LOSSES RESULTING FROM THE APPLICATION OF THE WASH SALE PROVISION OF THE INTERNAL REVENUE CODE, SECTION 118, TO TRADING IN CORN FUTURES CONTRACTS

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
	Contracts Sold		Selling Expenses			Book Profit or Loss Exclusive of Tax			Adjustment of Book Profit or Loss Through Application of Section 118 I. R. C.						
Year	Sales Price	Purchase Price	Commission	Tax	Book Profit or Loss	Total Book Profit or Loss	6 Months and under	6 to 18 Months	Wash Losses (Add'l. Costs)	6 Months and Under	6 to 18 Months	18 to 24 Months	Over 24 Months	Total Adjusted Profit or Loss	Wash Losses (Disallowed)
Domestic—United States															
1936	$ 589,900.00	$ 506,668.75	$ 700.00	$ 177.12	$ 82,354.13	$ 82,531.25	$ 82,531.25	$ —	$ —	$ 82,531.25	$ —	$ —	$ —	$ 82,531.25	$ —
1937	3,660,475.00	3,093,106.25	4,100.00	1,099.83	562,168.92	563,268.75	182,193.75	381,075.00	1,893.75	183,600.00	381,075.00	—	—	564,675.00	3,300.00
1938	9,434,281.25	10,229,806.25	19,937.57	701.46	816,164.03	815,462.57	599,240.70	216,221.87	421,593.80	10,606.24	70,049.99	—	—	59,443.75	1,177,612.62
1939	6,950,075.00	7,857,100.00	17,412.54	—	424,437.54	424,437.54	92,453.09	516,890.63	1,798,862.68	2,350.00	220,121.90	23,453.13	1,375.00	244,550.03	1,978,750.19
1940	8,866,006.25	8,167,637.50	17,781.36	—	680,587.39	680,587.39	192,271.81	488,315.58	1,341,067.36	34,384.39	96,712.49	1,393.75	204,056.35	140,334.50	520,145.47
1941	1,826,856.25	1,643,643.75	3,156.27	—	180,056.23	180,056.23	33,140.62	146,915.61	134,269.45	29,034.37	—	—	61,818.68	90,853.05	43,403.27
1942	4,845,025.00	4,946,787.50	8,206.88	—	109,969.38	109,969.38	197,598.13	87,628.75	75,741.29	606.25	75,163.13	—	—	75,769.38	261,480.05
Foreign—Argentine															
1936	3,008,946.96	8,257,010.48	In Pchse. Pr.	3,979.49	252,043.01	248,063.52	248,063.52	—	100,523.18	121,253.31	—	—	—	121,253.31	227,333.39
1937	754,769.07	727,698.47	" " "	599.95	26,470.65	27,070.60	27,070.60	—	126,810.21	98,048.80	1,690.81	—	—	99,739.61	—

Year 1942

Held less than 6 months.
Column (10) $ 606.25

Held more than 6 months
Column (11) $75,163.13

EXHIBIT 2-B, ANNEXED TO STIPULATION OF FACTS.

CORN PRODUCTS REFINING COMPANY

BUSHELS OF CORN PURCHASED AND RECEIVED AT PLANTS BY MONTHS FROM 1938 TO 1942, INCLUSIVE

691

Year	Month	Bushels of Corn
1938	Jan.	3,064,477
	Feb.	2,879,398
	Mar.	2,368,563
	Apr.	3,055,833
	May	2,685,153
	June	2,736,779
	July	3,289,083
	Aug.	3,288,062
	Sept.	2,712,331
	Oct.	3,445,493
	Nov.	3,278,544
	Dec.	2,847,057
	Total	35,650,773
1939	Jan.	3,037,694
	Feb.	2,440,180
	Mar.	2,446,592
	Apr.	3,357,578
	May	3,887,366
	June	2,709,739
	July	2,345,003
	Aug.	3,309,002
	Sept.	3,658,138
	Oct.	3,887,427
	Nov.	2,687,371
	Dec.	3,040,782
	Total	36,806,869
1940	Jan.	3,080,950
	Feb.	3,640,226
	Mar.	2,429,236
	Apr.	3,378,375
	May	3,627,996
	June	3,184,761
	July	2,806,706
	Aug.	2,554,081
	Sept.	3,354,589
	Oct.	3,016,840
	Nov.	2,669,977
	Dec.	3,478,672
	Total	37,222,409
1941	Jan.	3,868,474
	Feb.	3,586,175
	Mar.	3,807,450
	Apr.	5,200,664
	May	4,711,505
	June	4,626,307
	July	4,745,558
	Aug.	4,598,846
	Sept.	5,019,044
	Oct.	4,645,201
	Nov.	4,471,365
	Dec.	4,798,584
	Total	54,079,173
1942	Jan.	4,613,444
	Feb.	5,064,742
	Mar.	4,419,119
	Apr.	5,704,425
	May	4,816,199
	June	5,381,670
	July	5,160,793
	Aug.	5,111,121
	Sept.	4,848,466
	Oct.	5,398,031
	Nov.	4,913,260
	Dec.	5,330,243
	Total	60,761,513

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693

EXHIBIT 3-C, ANNEXED TO STIPULATION OF FACTS.

CORN PRODUCTS REFINING COMPANY

ANALYSIS OF CORN FUTURES CONTRACTS PURCHASED AND SOLD YEARS 1938 THROUGH 1940

File 141.8 Page	1938 Purchases Month	No. of Contracts	M. Bu.	MATURITY May, 1938 No. of Contracts	M. Bu.	July, 1938 No. of Contracts	M. Bu.	September, 1938 No. of Contracts	M. Bu.	December, 1938 No. of Contracts	M. Bu.	May, 1939 No. of Contracts	M. Bu.	July, 1939 No. of Contracts	M. Bu.	September, 1939 No. of Contracts	M. Bu.
44	January	93	1,670	13	265	1	40	79	1,365								
48	February	57	1,165	4	75	1	50	52	1,040								
52	March	71	1,945			3	115	63	1,750	5	80						
57	April	17	245					14	220	3	25						
58	May	51	1,205					19	435	32	770						
61	June	49	1,165			1	10			48	1,155						
65	July	150	3,960					5	1,050	112	2,095	33	815				
75	August	182	4,155							14	135	168	4,020				
87	September	97	2,080									89	1,975	8	105		
93	October	28	680							2	100	7	110	19	470		
95	December	29	1,405													29	1,405
		824	19,675	17	340	6	215	232	5,860	216	4,360	297	6,920	27	575	29	1,405

	1939 Purchases			July, 1939 No. of Contracts	M. Bu.	September, 1939 No. of Contracts	M. Bu.	December, 1939 No. of Contracts	M. Bu.	May, 1940 No. of Contracts	M. Bu.	July, 1940 No. of Contracts	M. Bu.	September, 1940 No. of Contracts	M. Bu.
99	January	60	2,495			60	2,495								
106	February	5	65			5	65								
106	March	16	535			16	535								
107	April	27	805	1	15	26	790								
110	May	1	10	1	10										
110	June	11	305					11	305						
111	July	81	1,640					13	215	68	1,425				
115	August	133	3,745							133	3,745				
126	September	100	2,160					7	190	75	1,620	18	350		
132	October	59	605							1	5	58	600		
134	November	53	1,195									53	1,195		
137	December	47	910									37	660	10	250
		593	14,470	2	25	107	3,885	31	710	277	6,795	166	2,805	10	250

	1940 Purchases			July, 1940 No. of Contracts	M. Bu.	September, 1940 No. of Contracts	M. Bu.	December, 1940 No. of Contracts	M. Bu.	May, 1941 No. of Contracts	M. Bu.	July, 1941 No. of Contracts	M. Bu.
141	January	89	1,720	11	115	77	1,600	1	5				
145	February	34	625	7	50	27	575						
147	March	33	440	1	5	32	435						
148	April	69	1,505			69	1,505						
153	May	74	1,465			74	1,465						
161	June	30	595					30	595				
162	July	2	100							2	100		
163	August	51	905					1	5	50	900		
165	September	34	475					14	105	18	355	2	15
167	October	21	295					3	40	1	5	17	250
		437	8,125	19	170	279	5,580	49	750	71	1,360	19	265

Exhibit 3-C, Annexed to Stipulation of Facts.

CORN PRODUCTS REFINING COMPANY

ANALYSIS OF CORN FUTURES CONTRACTS PURCHASED AND SOLD YEARS 1938 THROUGH 1942

File 141.8 Page	1941 Purchases Month	No. of Contracts	M. Bu.	MATURITY July, 1941 No. of Contracts	July, 1941 M. Bu.	September, 1941 No. of Contracts	September, 1941 M. Bu.	December, 1941 No. of Contracts	December, 1941 M. Bu.	May, 1942 No. of Contracts	May, 1942 M. Bu.	July, 1942 No. of Contracts	July, 1942 M. Bu.
169	March	32	455	29	405	3	50						
170	April	15	160	3	40	12	120						
170	May	2	20			2	20						
170	June	9	125			9	125						
171	September	87	1,090					29	345	58	745		
174	October	115	1,915					5	125	40	590	70	1,200
180	November	24	350							5	70	19	280
		284	4,115	32	445	26	315	34	470	103	1,405	89	1,480

File 141.8 Page	1942 Purchases Month	No. of Contracts	M. Bu.	July, 1942 No. of Contracts	July, 1942 M. Bu.	September, 1942 No. of Contracts	September, 1942 M. Bu.	December, 1942 No. of Contracts	December, 1942 M. Bu.	May, 1943 No. of Contracts	May, 1943 M. Bu.
182	February	8	80	8	80						
182	March	4	45			4	45				
182	April	39	535			39	535				
184	May	12	160			12	160				
185	June	62	1,185			7	155	55	1,030		
189	July	25	400			19	225	6	175		
191	August	75	1,460					4	30	71	1,430
195	September	63	1,860					16	375	47	1,485
201	October	78	1,905							78	1,905
206	November	18	745							18	745
208	December	6	300							6	300
		390	8,675	8	80	81	1,120	81	1,610	220	5,865

EXHIBIT 4-D, ANNEXED TO STIPULATION OF FACTS.

CORN PRODUCTS REFINING COMPANY

ANALYSIS OF CORN FUTURES CONTRACTS UNDER WHICH DELIVERY OF CORN WAS TAKEN YEARS 1937 TO 1942, INCLUSIVE

		Purchases			DELIVERY																
					May, 1938			July, 1938													
Year	Month	No. of Contracts	M. Bu.	Value	No. of Contracts	M. Bu.	Value	No. of Contracts	M. Bu.	Value											
1937	Oct.	15	275	$ 167,256.25	15	275	$158,956.25														
	Nov.	62	780	445,968.75	37	505	281,468.75	25	275	$ 155,742.50											
	Dec.	12	160	93,725.00	7	55	29,453.75	5	105	61,462.50											
		89	1215	706,950.00	59	835	469,878.75	30	380	217,175.00											
					May, 1938			July, 1938			September, 1938			December, 1938			March.				
1938	Jan.	22	345	207,443.75	11	260	131,675.00														
	Feb.	9	100	61,287.50							11	85	$ 43,237.50								
	Mar.	4	155	98,037.50							9	100	51,575.00								
	Apr.	3	120	75,062.50							4	155	79,675.00								
	May	18	755	434,037.50	14	560	315,181.25				3	120	61,350.00								
	July	9	400	233,381.25							4	195	99,450.00								
	Aug.	49	1230	641,187.50				4	200	116,143.75											
	Sept.	27	510	264,025.00										5	200	$ 95,575.00					
	Oct.	23	705	353,006.25													8	500			
	Nov.	28	655	335,275.00																	
		192	4975	2,702,743.75	25	820	446,856.25	4	200	116,143.75	31	655	335,287.50	5	200	95,575.00	8	500			
					May, 1939			July, 1939			September, 1939			December, 1939			May, 1				
1939	Jan.	27	730	397,306.25																	
	Feb.	10	140	68,906.25							27	730	362,687.50								
	Mar.	11	165	80,206.25							10	140	79,350.00								
	Apr.	19	525	263,331.25							11	165	82,537.50								
	May	15	755	383,293.75	5	45	224,737.50	9	285	134,912.50	10	240	109,600.00								
	Sept.	11	285	148,475.00				10	310	146,650.00											
	Oct.	17	165	80,893.75										6	200	103,162.50	5	85			
	Dec.	4	100	52,250.00										2	10	5,212.50	15	155			
														4	100	52,437.50					
		114	2865	1,474,662.50	5	445	224,737.50	19	595	281,562.50	58	1275	634,175.00	12	310	$160,812.50	20	240			
					July, 1940			September, 1940			May, 1941										
1940	Jan.	5	30	17,018.75	5	30	$20,100.00														
	Feb.	1	10	5,475.00	1	10	6,700.00														
	May	3	55	36,912.50				3	55	34,512.50											
	Aug.	6	50	27,168.75							6	50	33,937.50								
	Sept.	6	85	51,737.50				1	55	34,675.00	5	30	20,662.50								
	Oct.	3	20	11,412.50							3	20	13,775.00								
		24	250	$ 149,725.00	6	40	$ 26,800.00	4	110	$ 69,187.50	14	100	$ 68,375.00								

EXHIBIT 4-D, ANNEXED TO STIPULATION OF FACTS.

CORN PRODUCTS REFINING COMPANY

ANALYSIS OF CORN FUTURES CONTRACTS UNDER WHICH DELIVERY OF CORN WAS TAKEN YEARS 1937 TO 1942, INCLUSIVE

DELIVERY

	July, 1938				September, 1938			December, 1938			March, 1939			May, 1939			July, 1939		
e	No. of Contracts	M. Bu.	Value		No. of Contracts	M. Bu.	Value	No. of Contracts	M. Bu.	Value	No. of Contracts	M. Bu.	Value	No. of Contracts	M. Bu.	Value	No. of Contracts	M. Bu.	Value
5.25			$																
8.75	25	275	155,712.50																
3.75	5	105	61,462.50																
8.75	30	380	217,175.00																
	July, 1938				September, 1938			December, 1938			March, 1939			May, 1939			July, 1939		
e	No. of Contracts	M. Bu.	Value		No. of Contracts	M. Bu.	Value	No. of Contracts	M. Bu.	Value	No. of Contracts	M. Bu.	Value	No. of Contracts	M. Bu.	Value	No. of Contracts	M. Bu.	Value
5.00					11	85	$ 43,237.50												
					9	100	51,575.00												
					4	155	79,675.00												
					3	120	61,350.00												
1.25					4	195	99,450.00												
	4	200	116,143.75					5	200	$ 95,575.00	8	500	$235,025.00	41	730	$349,312.50			
														27	510	244,025.00			
																	23	705	$334,875.00
																	28	655	310,775.00
6.25	4	200	116,143.75		31	655	335,287.50	5	200	95,575.00	8	500	235,025.00	68	1240	$593,337.50	51	1360	$645,650.00
	July, 1939				September, 1939			December, 1939			May, 1940								
e	No. of Contracts	M. Bu.	Value		No. of Contracts	M. Bu.	Value	No. of Contracts	M. Bu.	Value	No. of Contracts	M. Bu.	Value						
					27	730	362,687.50												
					10	140	79,350.00												
					11	165	82,537.50												
	9	285	134,912.50		10	240	109,600.00												
7.50	10	310	146,650.00																
								6	200	103,162.50	5	85	53,125.00						
								2	10	5,212.50	15	155	100,055.00						
								4	100	52,437.50									
7.50	19	595	281,562.50		58	1275	634,175.00	12	310	$160,812.50	20	240	$153,180.00						
	September, 1940				May, 1941														
e	No. of Contracts	M. Bu.	Value		No. of Contracts	M. Bu.	Value												
0.00																			
0.00																			
	3	55	34,512.50																
					6	50	33,937.50												
	1	55	34,675.00		5	30	20,662.50												
					3	20	13,775.00												
0.00	4	110	$ 69,187.50		14	100	$ 68,375.00												

Exhibit 4-D, Annexed to Stipulation of Facts.

CORN PRODUCTS REFINING COMPANY.

ANALYSIS OF CORN FUTURES CONTRACTS UNDER WHICH DELIVERY OF CORN WAS TAKEN, YEARS 1937 TO 1942, INCLUSIVE

		Purchases			DELIVERY								
					July, 1941			December, 1941			May, 1942		
Year	Month	No. of Contracts	M. Bu.	Value	No. of Contracts	M. Bu.	Value	No. of Contracts	M. Bu.	Value	No. of Contracts	M. Bu.	Value
1941	Mar.	2	10	$ 6,068.75	2	10	$ 6,737.50			$			$
	Aug.	1	50	41,750.00							1	50	41,875.00
	Sept.	37	860	743,393.75				3	55	39,462.50	34	805	672,287.50
	Oct.	73	1,090	910,856.25				4	20	14,262.50	69	1,070	901,512.50
	Nov.	13	135	114,625.00							13	135	117,137.50
	Dec.	2	30	22,750.00				2	30	22,800.00			
		128	2,175	$1,836,443.75	2	10	$ 6,737.50	9	105	$ 76,525.00	117	2,060	$1,732,812.50
					July, 1942			September, 1942			December, 1942		
					No. of Contracts	M. Bu.	Value	No. of Contracts	M. Bu.	Value	No. of Contracts	M. Bu.	Value
1942	Feb.	5	105	$ 89,193.75	5	105	$ 86,881.25			$			$
	Apr.	37	585	522,431.25				37	585	485,781.25			
	May	54	1,480	1,339,350.00				54	1,480	1,239,500.00			
	June	6	460	408,631.25				6	460	383,775.00			
	July	19	825	724,768.75	13	710	621,918.75	6	115	95,762.50			
	Sept.	14	635	528,850.00				4	485	404,750.00	10	150	121,875.00
	Oct.	2	20	15,300.00							2	20	16,250.00
	Nov.	5	75	62,256.25							5	75	64,800.00
	Dec.	6	275	239,150.00							6	275	240,375.00
		148	4,460	$3,929,931.25	18	815	$708,800.00	107	3,125	$2,669,568.75	23	520	$ 443,300.00

EXHIBIT 5-E, ANNEXED TO STIPULATION OF FACTS.

CORN PRODUCTS REFINING COMPANY

706 SALES OF CORN FUTURES CONTRACTS BY MONTHS YEARS 1938 THROUGH 1942

Year	Month	Number of Contracts	M. Bushels
1938	Jan.	—	—
	Feb.	—	—
	Mar.	49	1,500
	Apr.	28	475
	May	38	755
	June	55	1,250
	July	185	4,050
	Aug.	164	3,795
	Sept.	111	2,480
	Oct.	49	1,035
707	Nov.	29	655
	Dec.	47	1,405
	Total	755	17,400
1939	Jan.	139	3,275
	Feb.	10	205
	Mar.	55	925
	Apr.	59	1,320
	May	—	—
	June	14	355
	July	26	1,265
	Aug.	68	3,035
	Sept.	51	1,230
	Oct.	27	375
708	Nov.	62	1,275
	Dec.	24	910
	Total	535	14,180
1940	Jan.	56	1,405
	Feb.	17	410
	Mar.	12	360
	Apr.	92	2,390
	May	49	665
	June	104	1,845
	July	159	3,000
	Aug.	91	1,910
	Sept.	88	1,620
	Oct.	39	790
	Nov.	9	100
	Dec.	12	100
	Total	728	14,595
1941	Jan.	—	—
	Feb.	—	—
	Mar.	—	—
	Apr.	52	1,025
	May	2	25
	June	51	710
	July	—	—
	Aug.	26	315
	Sept.	—	—
	Oct.	—	—
	Nov.	24	295
	Dec.	10	175
	Total	165	2,545
1942	Jan.	—	—
	Feb.	—	—
	Mar.	4	45
	Apr.	69	965
	May	66	1,070
	June	61	945
	July	—	—
	Aug.	48	650
	Sept.	46	680
	Oct.	68	1,400
	Nov.	—	—
	Dec.	—	—
	Total	362	5,695

Report of Proceedings.

709

[SAME TITLE.]

70 East 45th Street,
New York, N. Y.
Monday, June 18, 1951.

Met, pursuant to notice, at 11:10 o'clock, a. m.

BEFORE:

HON. CLARENCE V. OPPER, *Judge*.

710

APPEARANCES:

J. O. KRAMER, Esq.,
c/o MILTON BERNARD, Esq.,
and
SAMUEL ADAMS McCAIN, Esq., 17 Battery Place,
New York, N. Y.,
appearing for Petitioner.

10 East 40th Street,
New York, N. Y.,
appearing for Petitioner.

WALT MANDRY, Esq.,
and
MAURICE E. STARK, Esq., appearing for the Respondent.

711

PROCEEDINGS

The Court: Docket 22074, Corn Products Refining Company.

The Clerk: Please state your appearances for the record, gentlemen.

Mr. Kramer: J. O. Kramer, care of Milton Bernard, and Samuel Adams McCain, for the petitioner.

Mr. Mandry: Walt Mandry and Maurice E. Stark, for the respondent.

712 The Court: Proceed.

Mr. Kramer: This proceeding, your Honor, involves the calendar year 1942. The Commissioner asserts a deficiency in excess profits tax and in declared value excess profits tax in the amounts of $1,520,519.39 and $14,487.94 respectively. There are a number of issues here involved. The case will be submitted to the Court on a stipulation of facts and only one issue will be subject to oral testimony.

The first issue in the case is whether the petitioner Corn Products Refining Company's corn futures transactions during the year 1942 were capital transactions within the
713 meaning of Section 117 as contended by petitioner, or whether they were hedging transactions as contended by the respondent.

The second issue is whether, if the transactions were capital transactions, they were subject to Section 118, the wash sales provisions.

I might say during the year 1940 the same problems arose and that case was litigated before the Tax Court before Judge Murdock. The Tax Court decided in that case that Section 118 did not apply to these transactions, the wash sales provisions were not effective. Judge Mur-
714 dock felt it unnecessary at that time to decide whether Section 117 applied or whether they were capital transactions or whether the petitioner was engaged in hedging. This year the Court must decide that first issue.

I might also state at this point that petitioner made a motion in the 1940 case to have the entire decision reversed by the Court. That motion, although timely made, was denied.

The third issue, which is a compound issue, is whether the petitioner had income from Brazilian and Italian dividends in 1939. If petitioner had such income the excess profits credit of petitioner will be increased and the excess

profits credit carryover to 1942 will be similarly in- 715
creased.

The fourth issue in this case is whether this Court will follow its own rule in the San Francisco Stevedoring case. In 1941 petitioner had abnormal income arising out of a patent claim, the settlement of that claim. This income amounting to $436,945.36 was eliminated from excess profits net income in that year. The Commissioner agreed with that interpretation. However, the Commissioner refuses to make due allowance for that in computing the excess profits credit carryover to the year 1942; hence the issue of the San Francisco Stevedoring case.

The fifth issue in this case is whether petitioner cor- 716
rectly deducted the sum of $37,820.24 paid out as salaries in 1942. Actually what had happened was these sums were embezzled by a paymaster. They were not discovered until 1948. An insurance claim was put in and the money was recovered in 1949 at a time when the deficiency letter in this case had already been issued. Therefore, respondent is now asserting this as an affirmative claim and has the corresponding statutory burden of proving its case.

I would like very briefly, if I may, to go into the history of this litigation. The decision of the Tax Court in the 717
1940 case appears in 16 Tax Court No. 49. Decision was handed down February 20, 1951 by Judge Murdock, dealing only with the first two issues mentioned here. The Court, as I stated, felt it unnecessary to determine the first issue under Section 117, and that is the issue of whether the transactions in corn futures were capital transactions. The Court decided the second issue on Section 118, on wash sales, against the petitioner and in so doing Judge Murdock refused to follow the Trenton Cotton versus the Commissioner case in the Fourth Circuit. The petitioner's motion to review Judge Murdock's decision was denied although timely made, an issue your

718 Honor will have to decide, whether he wishes to follow Judge Murdock's opinion or whether he wishes to follow the three Judges in the Circuit Court.

The Court: Let me interrupt you there. So that I may be sure you understand, I will take this time to tell you that I have no choice on that subject. It is not a question of Judge Murdock's opinion not being the opinion of the Court because it was not reviewed. By custom and by statute that is the opinion of the Court unless it were to be overruled as any other opinion could be overruled. But it is no less an opinion of the Court.

719 Mr. Kramer: Incidentally, the 1940 proceeding is now awaiting Rule 50 computation.

Your Honor will of course have before him the opinion of the Court in the 1940 case and, as a matter of fact, the stipulation of facts will be presented to your Honor and will contain a stipulation that the entire record in the 1940 case shall be considered before the Court in this proceeding without further proof by either side, so that you will have ample opportunity to examine into that record. The Court, incidentally, in discussing the 117 issue said it was a difficult one.

There would be no purpose, therefore, since your Honor
720 will have the entire record and the opinion of the 1940 case before him, in making a decision, in my repeating all the facts with regard to the Section 117 and the Section 118 issue. All I need say is that it is respondent's contention that these transactions in corn futures were hedging transactions.

Petitioner states that was mathematically impossible, that it was not, and consequently a full series of cases will be cited to the Court in brief in support of petitioner's contention including Modesto Dry Yard case handed down last year in 14 Tax Court, which case was actually acquiesced in by the Commissioner.

I would like if I may briefly to develop the issue of em-

bezzlement and the embezzlement recovery. It will be 721
stipulated that the crime of embezzlement was not discovered until 1948 and that the claim for insurance was made in that year. Consequently when we received payment in 1949 the deficiency letter had already been issued in this case. There is a peculiar twist in this embezzlement issue, inasmuch as this petitioner actually withheld money for the payment of federal old age benefit and turned it over to the treasury in 1942. It also paid its own share of federal old age benefits and its share of the unemployment insurance, and paid it over to the treasury. There is no question that that happened. The only problem is: does the insurance recovery in 1949 prevent the 722
taking of the loss in 1942 even though petitioner did not know at the end of 1942 it had either a loss or the possibility of an insurance recovery. We submit the Cahn case in the Fourth Circuit on that particular score to point out to the Court here that it is the condition at the end of the taxable year which determines the possibility of insurance recovery. We claim in this case we could not even have known about an insurance recovery because we did not know about the loss. Consequently we claim we are permitted to take this deduction for salaries paid in the year 1942.

I have already developed the problem of the San Francisco Stevedoring case. I will not go into that further. That will be fully covered in the briefs. However, I would like to develop just for a moment the oral testimony which we will present in Court with respect to the foreign dividends. 723

We will show through the witness, the treasurer of this petitioner, that in 1939 petitioner had two Brazilian subsidiaries, Refinacoes De Milho, Brazil S. A. and Maizena, Brazil S. A. During the year 1938 Maizena declared a dividend payment to Corn Products Refining Company on January 12, 1939. This dividend was declarable for

724 the reason that Maizena had earned commissions from Refinacoes in 1938. We will show that a portion of that dividend was actually paid over to Corn Products Refining Company, this petitioner, in 1939 and that the balance was in effect loaned to one of the petitioner's subsidiaries, to wit, Refinacoes.

Originally, this matter was accounted for tax-wise in a most peculiar fashion. Neither the respondent nor I agree with the theory, but which was then prevalent in the Government; that was where you had income which might be blocked, reporting it at a zero basis, then in the

725 year you actually repatriate the money, reporting it as a capital gain. No one has been able to find any authority for that type of treatment, but that is the way this petitioner had consistently at the treasury's instructions, reported its dividends during this period from 1936 I believe through at least 1939.

With respect to the Italian dividends the testimony will show, among other things, that the dividends were declared and payable by various Italian subsidiaries. During the year, we will show that a large amount of lire were actually repatriated to the United States. We claim this proves convertibility.

726 In both the case of the Brazil and the Italian dividends we will rely on the Edmond Weil case, which incidentally dealt with the precise year we are now faced with, that is whether income is reportable in Brazil in the year 1939. That case dealt with the reporting of a capital gain in 1939. In that case the treasury had insisted that the income was reportable. The taxpayer insisted it was not. This Court and the Circuit Court of Appeals for the Second Circuit found it was reportable, which is the position that the taxpayer is now taking in this case.

The Court: Did the Foundation Company case deal with that, too?

Mr. Kramer: I believe it did, but not with this particu- 727
lar country in this particular year as the Weil case did.

The Court: It was Brazil, I believe.

Mr. Kramer: I don't recall whether it was 1939 or——

The Court: As I remember it was the early 30's.

Mr. Kramer: I know the Weil case deals with this identical year.

The dividends in the case of the Brazilian situation were declared and accrued in 1939, payable in 1939. There is an error in the stipulation of facts which respondent is aware of and we will ask when the stipulation is presented that the stipulation be corrected in that respect.

Before closing I want to thank the respondent's attorney 728
for his gracious help in this case in stipulating the facts which otherwise would have required an extended trial perhaps running into a week or two weeks.

Thank you very much.

The Court: I am very much obliged to both of you. We wish there were more stipulations of that nature.

I want to ask before you conclude: There are some 12 assignments of error. I have not read at least one of them carefully enough to be sure whether they are repetitious or not, but what I want to know from you is are there any assignments of error which are now being 729
pleaded?

Mr. Kramer: There are not. Those are mechanical assignments of error which would be alternatively pleaded and adjusted in a rule 50 computation.

The Court: But everything in the pleadings is still in issue?

Mr. Kramer: That is correct, your Honor.

Mr. Mandry: May it please the Court, Mr. Kramer has made a rather clear and fair statement of the issues in this case, and I do not think it would serve any particular purpose to rehash the various questions.

In response to your Honor's inquiry about the number

730 of errors assigned in the petition: there are some 12 assignments of errors in it, and I think that all those assignments will really boil down to about five issues; and in addition thereto there is another issue which is affirmatively raised by the respondent.

With respect to the first issue of the dealings in corn futures, it is our position that these were nothing more than hedging transactions and therefore constitute an exception to the provisions of Section 117. The respondent does not contend that this falls within the four enumerated exceptions to Section 117 but falls within that exception which has been brought about by many court decisions
731 and where there are hedging transactions the gains and losses are ordinary losses and ordinary gains.

The second issue relates to whether the provisions of Section 118 are applicable. As Mr. Kramer has stated, this Court in the case of Corn Products Refining Company, Inc., for the year 1940, 16 Tax Court No. 49, has decided this issue in favor of the respondent. As Mr. Kramer stated, Judge Murdock did not pass upon the question of the applicability of Section 117, and, as Mr. Kramer stated, he stated it was a very difficult problem. But he also stated that there was logic and common sense in the
732 respondent's position.

There is an alternative assignment of error here, and that is whether these future transactions constitute abnormal deductions under the provisions of Section 711 (B) (1) j) (ii) of the Internal Revenue Code. It is our position that they do not constitute such deductions.

Then there is the issue as to whether certain Brazilian and Italian dividends should constitute income in the year 1939. Mr. Kramer has stated some of the circumstances as to how these dividends were reported and treated. However, the petitioner in its income tax return for the year 1939 did not report these dividends as income in those years.

It is our position that due to the restrictions in Brazil 733
and Italy these funds were not available to the petitioner and that fact in conjunction with the method wherein the petitioner has treated these dividends by reporting them in subsequent years when realized, I think this issue should be decided in favor of the respondent.

Another issue deals with the embezzlement. In short, our position is that the petitioner was reimbursed by insurance for the entire amount of its loss and is not entitled to a deduction in 1942.

Mr. Kramer has referred to the fact that the petitioner also paid certain taxes on that amount. The petitioner 734
did and the petitioner deducted those amounts, and the petitioner was reimbursed for those amounts. Mr. Kramer also refers to certain unemployment insurance which the petitioner paid. That, of course, is separate from the embezzled amounts except it happened to be computed on the embezzled amounts, but the petitioner deducted that from his income tax return; and the respondent does not desire to make any change in that deduction, so that is not before the Court in so far as the unemployment insurance payments are concerned.

The last issue relates to the carryover of the unused excess profits tax credit based on the fact there was an 735
abnormal income.

We rely on the case of San Francisco Stevedoring Company with respect to that issue.

I believe that is all I care to state at this time, your Honor.

Also I wish to thank the petitioner. They were just as cooperative in preparing this case for trial.

Mr. Kramer: If your Honor please, Mr. Mandry and myself would like now to offer in evidence a stipulation of facts with annexed exhibits running from 1-A to 5-E.

The Court: The stipulation will be received.

Mr. Kramer: With respect to paragraph 28 of that

736 stipulation we would ask the Court to make note that the dividend was declared in 1938 in December, made payable on January 12, 1939, instead of as there stated.

The Court: So that oral amendment is agreed to, Mr. Mandry?

Mr. Mandry: That is agreed to, your Honor, and I was wondering as a matter of mechanics if it would not be desirable at the end of the trial for the parties to make necessary corrections in that paragraph.

The Court: What I prefer to have you do is prepare a short supplemental stipulation and file that because it is already in the record.

737 Mr. Mandry: Very well.

The Court: If you want to get it in in the form it should be annexed to the stipulation, I think it would be a good idea to do it that way.

Mr. Kramer: We will restate that particular paragraph. I did not want to offer proof contrary to that stipulation without first informing the Court.

In addition, petitioner and respondent would like to offer certain additional exhibits to bring the 1940 record down to date—that is to the end of 1942.

We would like to offer as a joint exhibit, Exhibit No. 738 6-F which is an analysis of stock and unfilled orders consisting of four pages.

The Court: It will be received and marked in evidence as one exhibit.

The Clerk: Joint Exhibit 6-F.

(Joint Exhibit No. 6-F is received in evidence.)

Mr. Kramer: Petitioner and respondent would like to offer in evidence Exhibit 7-G which brings down to date former Exhibit 7-G of the 1940 trial and shows the orders on hand and futures owned position of the petitioner during the year 1942 by means of a graph.

Colloquy of Counsel.

The Court: It will be received and marked in evidence 739
as one exhibit.

(Joint Exhibit 7-G is received in evidence.)

Mr. Kramer: Petitioner would like to offer in evidence as Exhibit No. 16 an exhibit of an agreement between Corn Products Refining Company and Huron Milling Company, dated June 1, 1942.

I would like to explain to the Court why we prefer if possible to call it No. 16. The exhibits in the previous trial ran through 15 and these exhibits which we have previously offered in evidence this morning merely bring 740
those exhibits down to date. This one is in addition to the record of the former case. Whether your Honor wants to call that Exhibit No. 8 or No. 16 it is entirely up to the Court.

The Court: I think we prefer to call the exhibit the next number, since it is not being marked in the other proceeding. If we should have other exhibits it would get us into trouble. We would like to carry on through with the numbering.

Mr. Mandry: No objection.

Mr. Kramer: No objection.

The Court: It will be received and marked in evidence 741
as Exhibit 8.

The Clerk: Petitioner's Exhibit 8.

(Petitioner's Exhibit No. 8 is received in evidence.)

Mr. Kramer: Now I would like to call as a witness Mr. Callender.

742 Whereupon,

H. L. CALLENDER

was called as a witness in behalf of the Petitioner, and having been first duly sworn, was examined and testified as follows:

The Clerk: State your name and address.

The Witness: H. L. Callender, Plainfield, New Jersey.

Mr. Kramer: I might state to the Court this testimony is produced solely with respect to the for-
743 eign dividend issued.

DIRECT EXAMINATION

By Mr. Kramer:

Q. What is your present occupation? A. I am treasurer of the Corn Products Refining Company.

Q. How long have you been with the petitioner? A. Thirty-five years last December.

Q. What was your position with the company in 1939?
744 A. I was chief accounting officer at the time. Chief accountant, I would say.

Q. Were you also assistant to the treasurer? A. Yes, sir.

Q. And in your capacity as chief accounting officer were you familiar with the books and records of Corn Products Refining Company and its subsidiaries? A. I was.

Q. Will you tell the Court whether the records of Corn Products Refining Company and its subsidiaries were kept on an accrual basis during the year 1939? A. They were kept on an accrual basis.

Q. Is that true— A. In 1939.

Q. Is that true of this entire period? A. Yes. 745

Q. Do you know the names of the two Brazilian subsidiaries, wholly owned by petitioner in this 1939 dividend matter? A. Yes. They were Maizena, Brazil S. A. and Refinacoes De Milho, Brazil S. A.

Q. You stated that both of these subsidiaries were wholly owned? A. Yes, they both were.

Q. During 1939 did Refinacoes De Milho owe Maizena any money for commissions? A. Yes.

Q. Do you know what happened with respect to those commissions from an accounting point of view? A. On the books of Maizena, Brazil S. A. the commissions were credited to P & L and debited to Refinacoes De Milho, a 746
current receivable.

On the books of Refinacoes the commissions were debited to profit and loss and credited to Maizena, Brazil S. A., a current liability.

Q. Do you know whether or not taxes were paid to Brazil by Maizena upon this commission income? A. They were.

Q. You are positive of that? A. Yes, sir.

Q. Do I understand correctly that Refinacoes De Milho is a New Jersey corporation? A. It is.

Q. And Maizena is a Brazilian corporation? A. That 747
is right.

Q. It is stipulated that Maizena declared a dividend of 2,175,000 milreis to Corn Products Refining Company payable January 12, 1939 or will be so stipulated. Will you describe what entries were made on the books of Corn Products Refining Company with respect to that dividend? A. On the books of the Corn Products Refining Company in June, 1939 we debited an account known as blocked account.

Mr. Mandry: I didn't hear that.

748 The Witness: We debited an account known as blocked account, Maizena, Brazil, S. A. That was an accounts receivable account. And we credited blocked income. That was a deferred credit income. In 1939 and in 1940 that dividend was paid, part in 1939 and the balance, the major portion of it in 1940; and at that time we debited cash and we credited the blocked account.

By Mr. Kramer:

749 Q. Do you know approximately how much was actually paid in 1939? A. Yes.

Q. Will your records which you have with you indicate that figure? A. The records indicate that we received in 1939 $4,862.31, the dollar equivalent of 100,649.9 milreis.

I might give the other entry we made.

Q. Please do. A. Having received the balance of the dividend in 1940, we proceeded to debit blocked income and we credited income, taking it into our book income in 1940.

Q. Did Refinacoes De Milho have sufficient assets to pay its commissions due to Maizena in 1939? A. Yes. Current

750 assets, yes.

Q. What was the end result of the entire transaction, disregarding the money that was actually paid to Corn Products Refining to which you have just testified? What was the end result? A. The balance unpaid at the end of 1939, the net result I would say was a loan to Refinacoes.

Q. The wholly-owned subsidiary? A. Yes. The net result.

Q. That was not Maizena the corporation that had declared a dividend? A. No, it was not.

Q. Do you know of your own knowledge what were the

rates of exchange accepted by the Bureau of Internal 751
Revenue as the current or market rate prevailing as of December, 1938, for milreis?

Mr. Mandry: I object to that, your Honor.

The Court: What grounds?

Mr. Mandry: On the grounds he is testifying as to what the rate of exchange was accepted by the Bureau, and I object unless he is qualified to state what the rate of exchange was accepted by the Bureau.

The Court: He has asked if he knows of his own 752
personal knowledge. I admit that is a little difficult for me to construe, but if he answers honestly he will either make a statement which will be admissible or he will have to say he does not know.

Mr. Kramer: May I rephrase the question, and I will simply ask the witness if he is familiar with the rates set out in the Internal Revenue Bulletin by the Commissioner as being the acceptable rate of exchange, using the very language if I may.

"The following rates of exchange are accepted by the Bureau of Internal Revenue as the current or 753
market rates of exchange prevailing as of December 30th as of that year."

By Mr. Kramer:

Q. Are you familiar with that rate as at the end of 1938? A. I am.

Q. What was that? A. At the end of 1938 it was 5.86 cents a milrei.

Q. What was it at the end of 1939? A. At the end of 1939 it was 6.058 cents a milrei.

Q. At what rate of exchange did you re[illegible]he amount

754 which you actually received in 1940? A. We booked the dividend.

Q. In 1939, I am sorry. A. We booked the dividend in 1939 at a rate of 5.95 cents a milrei.

Q. Turning to the problem of Italian dividends, did the petitioner have Italian subsidiaries in 1939? A. It did.

Q. Will you name the principal ones which were here involved in this case, if you can pronounce those names? A. S. A. Anticromos Dott Aldo Volpino-Milan. S. A. Ligure Industriale Commerciale-Genoa. S. A. Prodotti del Mais-Milan. Fabbriche Riunite Amido Glucosia Des-
755 trina-Milan.

Q. It is stipulated that dividends in the amount of 4,496,327 lire were declared payable in 1939 to Corn Products Refining Company.

Will you again explain to the Court how these sums were treated on Corn Products books and on the books of the various subsidiaries declaring them? A. Should I take each dividend separately? There might be a variation in the entries that were made.

Q. Please do so. A. The entry made by the Corn Products Refining Company on the dividend declared by S. A. Anticromos Dott Aldo Volpino-Milan was as follows: In
756 May of 1939 Corn Products Refining Company debited blocked account, which is an accounts receivable account, and they credited blocked income, which is a deferred credit to income, recording the dividend of 142,920 lire at 5.2625 cents per milrei, the published rate on date—published rate for milreis on the date the dividend was declared.

Q. You mean lire instead of milrei? A. I am sorry. Did I say milrei?

Q. Yes. A. Maybe I had better start again.

Q. Will you withdraw that answer, Mr. Callender, and start over again?

Mr. Kramer: Mr. Reporter, will you please read my question. 757

(Question read.)

The Witness: I will take the entry made on Corn Products Refining Company covering the dividend declared by S. A. Anticromos Dott Aldo Volpino-Milan in May of 1939: Corn Products Refining Company debited blocked account which is an account receivable account and credited blocked income covering 142,920 lire at 5.2625 cents per lire.

The published rate for the lira on the date the dividend was declared. The foreign affiliated company debited surplus with the dividend and it credited dividends payable. 758 It then proceeded to pay the dividend, and it paid 142,920 to the Corn Products Refining Company or for account of Corn Products Refining Company, and they paid the balance of 157,080 lire to the other stockholders.

Q. These were not wholly owned subsidiaries, then? A. No. This 142,920 lire that was paid, was paid to subsidiaries wholly owned known as Societe Finanziaria Agricola Italo-Americana-Milan for account of Corn Products Refining Company.

759 This company credited to Corn Products Refining Company and used the funds. Accrued interest. The company also accrued interest on it which was also credited to the Corn Products Refining Company.

Now I will take the next.

Q. Societe Finanziaria Agricola Italo-Americana-Milan was a wholly owned subsidiary of Corn Products? A. It was.

Q. The money was deposited in its account? A. The money was deposited to the credit of Corn Products Refining Company.

760 On the dividend declared by S. A. Ligure Industriale Commerciale-Genoa, the Corn Products in May of 1939 made this entry: It debited blocked account which is an accounts receivable account Finanziaria, and it credited blocked income to cover the dividend of 565,763 lire at 5.2625 cents per lire, the published rate for the lire on the date the dividend was declared.

The corresponding entry on the books of the Ligure Company was a debit to surplus to cover the dividend and a credit to dividend payable. The latter made a following entry, subsequent entry debiting dividends payable and

761 crediting cash.

Q. In what year was that? A. That was done in the year 1939, I believe. It credited Corn Products Refining Company with 565,763 lire and it paid cash, I believe, to the other stockholders in the amount of 384,237 lire. The 565,763 lire were paid to Societe Finanziaria Agricola Italo-Americana-Milan for account of Corn Products Refining Company.

Q. That is the same subsidiary? A. That is the same subsidiary.

Q. You previously named? A. This company credited the Corn Products Refining Company and used the funds.

762 It accrued interest on the funds which—and the acrued interest was also credited to the Corn Products Refining Company.

The Corn Products Refining Company on the dividend of S. A. Prodotti del Mais-Milan was as follows: it also was made in May of 1939 and it debited against blocked account Prodotti del Mais-Milan which was for accounts receivable account and it credited blocked income to cover 1,643,718 lire at 5.2625 per lire, the published rate for lire on the date the dividend was declared.

On the books of the crediting entry on the books of the Prodotti Company, was as follows: It debited surplus with

the dividend declared and it credited dividend payable, a 763
current liability on their books, with the Corn Products Refining Company's portion and the portion for the other stockholders.

The dividend declared by the Fabbriche Riunite Amido Glucosia Destrina Milan was recorded on the books of the Corn Products Refining Company as follows: this entry occurred also in May of 1939, and we debited blocked account Fabbriche, which was an accounts receivable account, and we credited blocked income which was a deferred credit to income to cover 2,143,926 lire at 5.2625 cents per lire, the official rate or the published rate, rather, 764
on the date the dividend was declared.

The crediting entry on the books of the Fabbriche Company was as follows: It debited the dividend to surplus and it credited dividend payable, a current liability, part of the credit being to the Corn Products Refining Company and part to its other stockholders.

Q. Now you mentioned the term "interest on these dividends." Will you state in what year that interest was accrued in each case? A. You will have to give me time to look at this account so I can pick it out.

Q. Maybe I can shorten the question. Was the interest accrued in 1939 in any case? A. I see an accrual of interest was—of $129—$60.54 in December, 1939. 765

Q. In which case is that? A. This is in the case of funds to the credit of Corn Products Refining Company in the Banca de America e de Italia.

Q. To summarize your testimony, can you state how these Italian dividends were treated with respect to payment or with respect to loans to other subsidiaries? Can you state in general what the approximate amount was in each case? A. Well, you would have to give me time to analyze these accounts. I do know that part of the dividends were turned over to the Banca de America e de

766 Italia for account of Corn Products Refining Company. Part was turned over to Banca Commerciale de Italia. Part to the National City Bank in Milan. And part to this Finanziaria Company. As to the amount applicable, I would have to spend some time analyzing these accounts.

Q. Do you know how the Italian and Brazilian dividends were actually reported on the petitioner's 1939 income tax return? A. Yes.

Q. Will you please explain to the Court how that treatment was made? A. They were reported as a zero value
767 with the dividend when received picked up as a capital gain.

Q. Was this the same treatment which had been given to dividends in previous years? A. Yes.

Q. Do you know whether or not it was in accordance with the examination by the Bureau of Internal Revenue for those years? A. I cannot answer the question.

Q. Do you know what the official rate of exchange was as set forth in the Internal Revenue Bulletin for the end of the year 1939? A. Yes, I know.

Q. Was that amount—what was that amount per lira? A. 5.0471 cent per lira.

768 Q. What was the value? What was the figure in 1938, if you have it? A. 5.2604 cents per lira.

Mr. Kramer: Thank you very much, Mr. Callender.

CROSS EXAMINATION

By Mr. Mandry:

Q. Mr. Callender, confining our examination at this time to the Brazilian dividends, I believe you stated that

the net result was that this was a loan from Maizena, 769
which was the corporation that declared the dividend, to Refinacoes? A. Yes, Refinacoes.

Q. Was that your testimony, that that was the end result? A. Will you repeat that question?

Q. I believe you said the end result was that the dividends declared by Maizena was a loan to Refinacoes? A. Refinacoes.

Q. Is that your statement? A. The net result, yes. It may be so construed.

Q. How did you figure that out? A. Well, on the books of the Corn Products Refining Company there was a debit to an account receivable known as Maizena, S. A. And on 770
the books of Maizena, S. A. there was a debit on its books to Refinacoes.

On the books of Refinacoes there was a credit to Maizena, S. A. Maizena, S. A. owed the Corn Products Refining Company this dividend, and Refinacoes owed Brazil —owed Maizena, Brazil the commissions. So it may be construed the money that was due Corn Products by Maizena was loaned to the Refinacoes Company.

Q. Those were just bookkeeping entries, were they not? A. That is right.

Q. Do you know whether there were any other debts 771
outstanding or moneys owed between these various corporations? A. Do I know what?

Q. Whether there were any debts or liabilities outstanding between these— A. They were.

Q. (Continuing) —three companies? A. They were.

Q. That is apart from this dividend and commission situation? A. Yes, that is right.

Q. You are aware, are you not, there were restrictions in Brazil in 1939 with respect to transmitting funds out of Brazil? A. I am. Yes.

Q. Now in 1939 you testified you did not report as in-

772 come any of the dividends in question. That is true, is it not? A. That is right.

Q. Do you know in what years you did report such dividends? A. Yes. In November of 1940.

Q. When were the funds actually transmitted to the petitioner in the United States? A. In 1939 and the major portion in 1940.

Q. What sum was transferred to the petitioner in 1939? A. I think I gave that.

Q. Is that the sum of $4,862.31? A. I think that is the figure I gave before. $4,862.31.

773 Q. Do you know the circumstances of the transfer of that sum to the United States? A. I do know we received a draft drawn by the Bank of Brazil, Banco do Brazil. I have a copy of the draft here. This draft was drawn by the Banco do Brazil on the Guaranty Trust Company in favor of Corn Products Refining Company for $1,620. It is dated December 20, 1939. That was supposed to be the milrei equivalent of 33,550 milreis. The payments we received were made in this fashion: we did not sell the exchange here in New York.

Q. You do not know who procured that draft, do you? A. No, I do not.

774 Q. Nor the circumstances under which it was procured? A. No, I do not.

Q. Are you aware there was in Brazil in 1939 an unofficial rate of exchange? A. Yes.

Q. Coming down to your Italian dividends, you have mentioned about four or five Italian companies? A. Four.

Q. Four? A. Yes.

Q. Now in any one of those dividends that was declared by Italian companies were any funds ever transmitted to the petitioner in the United States? A. Yes.

Q. What sum was that? I am now speaking of the entire dividends regardless of what company they came

from. A. Part of the blocked account that we had with Societe Finanziaria, part of that balance was transferred to the Banca de America for our account. 775

Q. You say it was transferred? A. It was transferred.

Q. To what bank? A. The Banca de America e de Italia.

Q. The Banca de America e de Italia? A. The Banca de America e de Italia for our account. I am coming to your question in just a moment. Part of the blocked account that we held against Prodotti del Mais was also transferred to the Banca de America. And part of the blocked account that we held with Fabbriche Riunite Amido Glucosia Destrina was transferred to the National 776
City Bank of Milan, Banca de America in Italy, and Banca Commerciale in Italy. These various bank accounts that we then acquired, we were able to sell here in New York some of the lire at an unofficial rate. I see an entry here where there was a sale of 200,000 lire in December of 1939 and a sale of 210,000 lire also in December of 1939 to foreign exchange traders here in New York. We also sold some lire in 1940 to the Chase National Bank and to other foreign exchange dealers.

Q. Now, with respect to the various dividends which were credited to your account and various banks in Italy, 777
those funds were still in Italy, were they not? A. Yes, sir.

Q. And you did sell lire amounting in dollars to approximately $8500, is that not true? A. I think so. It is 410,000 lire, I don't know the dollar equivalent.

Q. That could be computed from your rate, the rate that you used? A. Yes.

Q. Do you know the circumstances under which those sales were made? A. Well, they were sold here in this market. We were anxious at that time of course to realize dollars for our lire, and if anybody wanted to buy lire, we were willing to sell it at a price of course.

778 Q. That would have been true of the full amount of the dividends? A. Yes. Yes, it was.

Q. Would that also have been true of the Brazilian dividends? A. I think if we could have found a market here at perhaps a better rate, we would have negotiated the sale here in this market rather than in Brazil.

Q. To sum up your general treatment of these Italian and Brazilian dividends, as I understand your testimony, you reported those dividends in your returns from 1936 to 1938 with respect to dividends declared in those various years. That is true, is it not? A. Yes.

779 Q. In respect to your 1936 to 1938 dividends, those dividends were eliminated from your returns, were they not? A. They were shown at zero value, yes, for tax purposes.

Q. You did not in 1939 report this 1939 dividend except to that extent? A. The portion which was received we would have reported.

Q. Yes. Now, in your returns say for 1939, 1940, 1941, and 1942, have you not carried out that system of accounting for your dividends by not treating them as income in the year they were declared and payable but taking them up in the years when amounts were realized thereupon? A. You mean for book purposes?

780 Q. For your income tax purposes? A. I might review our practice. "If the foreign dividend payable to us was blocked by exchange restrictions our practice was to book the dividend as a receivable at the prevailing rate of exchange, offset by a credit to the deferred income, taking it into income in the year it was received."

That practice I believe has been consistently followed, and I know it is still followed. For tax purposes, however, I understand that blocked foreign dividends have at times been included as taxable income when payable and at times when received, depending on the attitude of the Bureau of Internal Revenue.

Q. That last statement is very general, Mr. Callender. 781
What I want to know specifically is—as I think you have testified—that in the year 1939 you did not report these so-called 1939 dividends, is that a fact? A. That is right. That is right.

Q. And you did in your later returns, whether that was 1940 or 1941 or 1942, include such dividends when they were realized on by the petitioner, is that true? A. That is true.

Q. That was your general— A. Yes.

Q. —practice? A. Yes.

Mr. Mandry: That is all. 782

Mr. Kramer: No further questions of this witness.

(Witness excused.)

Mr. Kramer: Your Honor, I have one other witness who may be able to clear up a point this witness could not answer. It will take about two minutes. No longer than that.

The Court: Very well.

Mr. Kramer: Mr. Gleason.

783

Whereupon,

DONALD H. GLEASON

was called as a witness on behalf of the Petitioner, and having been first duly sworn, was examined and testified as follows:

The Clerk: State your name and address.

The Witness: Donald H. Gleason, New York City.

784

DIRECT EXAMINATION

By Mr. Kramer:

Q. What is your present position? A. I am general tax executive of the Corn Products Refining Company.

Q. What are your duties as such? A. I have general supervisory line responsibility for the handling of all tax matters and report to the comptroller.

Q. Are you familiar with the examinations of the tax returns of the petitioner for the years 1936, 1937, 1938, and 1939? A. I am generally familiar.

785

Q. Are you familiar with the manner in which foreign dividends, particularly Brazilian and Italian dividends, were treated in those examinations? A. Well, in the later years of which you speak——

Q. Yes. A. After the Bureau's position in respect of the earlier years had become clear we did not include in our tax returns these items of blocked foreign exchange until we were able to convert them.

Q. How were they then treated? A. They were treated as short and long-term gains over a cost basis of zero with one exception. That was in respect of certain milrei converted in 1940 or I believe it was 1941.

786

Q. But this treatment you say was in accordance with the R. A. R.'s of earlier years? A. Yes. There were amendments made in respect of each year, if I recollect correctly, 1932 to 1937, but that general basis was——

Q. When I refer to R. A. R. you realize I am referring to revenue agent's reports? A. Yes, yes.

Mr. Kramer: Thank you.

Mr. Mandry: Just one question.

CROSS EXAMINATION 787

By Mr. Mandry:

Q. Mr. Gleason, when you state that was in accordance with the Bureau's position, what do you mean by that? A. I mean that in earlier years in Brazil, for example, we had set up dividends on the accrual basis for tax purposes. Then in connection with the revenue agent's reports for those earlier years they were taken out by the revenue agent of taxable income and nothing was taken to taxable income in connection with those reports until exchange was converted. 788

In respect of the year 1939 it was in following that general practice that we did not set up certain of these dividends referred to.

Q. So that was the result of your handling of the previous years with the revenue agent, was it not? A. Well, you can say that. I do not say that we were particularly happy about that particular thing at that time. It was just decided to let it go at that.

Q. And you agreed to do it? A. We did not take the cases to Court, sir.

Q. You agreed to it so far as the treatment thereafter was consistent with that position, was it not? A. Well, that is—that is a—they allowed them to be handled that way, yes, sir. 789

Mr. Mandry: That is all.

Mr. Kramer: No further questions.

(Witness excused.)

Mr. Kramer: Petitioner rests, your Honor.

Mr. Mandry: Respondent rests, your Honor.

The Court: What about briefs?

Mr. Kramer: I bow to Mr. Mandry's request on that.

790 Mr. Mandry: Your Honor, I would prefer simultaneous briefs in that I would like 60 days for opening briefs and 45 days for reply. I have worked that out because this is tied up a good deal with summer vacations.

The Court: Are you satisfied with that?

Mr. Kramer: Very much so.

The Court: Very well, 60 days for principal briefs; 45 days for each side to reply.

Will the clerk please read those dates?

The Clerk: August 17th for principal briefs; October 1st for the replies.

791 Mr. Kramer: We will submit that amended paragraph to your Honor before you return to Washington.

The Court: Any time while this term is still in session. Anything further?

Mr. Mandry: That is all, your Honor.

Mr. Kramer: No, sir, your Honor.

The Court: Marked submitted.

(Whereupon, at 12:30 o'clock, p. m., Monday, June 18, 1951, the hearing in the above-entitled matter was concluded.)

792

Joint Exhibit 6-F.

CORN PRODUCTS REFINING COMPANY

ANALYSIS OF "FEED SITUATION" FROM JANUARY 7, 1941 TO DECEMBER 21, 1942, INCLUSIVE (In Tons)

	1/7/41		1/13/41		1/20/41		1/27/41		2/3/41		2/10/41	
	Feed	Gluten Meal	Feed	Gluten Meal	Feed	Gluten Meal	Feed	Gluten Meal	Feed	Gluten Meal	Feed	Gluten Meal
Stock	7,069	2,286	9,837	2,466	12,589	2,534	14,394	2,169	16,722	2,017	19,859	2,015
Unfilled Orders	18,267	3,865	16,176	3,673	13,859	2,925	22,989	5,569	19,386	4,797	16,947	4,367
	2/17/41		2/20/41		2/24/41		3/3/41		3/10/41		3/17/41	
Stock	22,223	1,761	23,362	1,973	24,255	2,448	22,651	2,680	24,400	3,163	26,107	3,273
Unfilled Orders	14,567	3,402	13,490	2,823	22,644	4,618	23,812	4,642	20,660	4,112	30,687	7,326
	3/24/41		3/31/41		4/7/41		4/14/41		4/21/41		4/28/41	
Stock	27,602	3,856	26,267	4,036	26,321	4,028	29,342	4,455	31,973	5,202	33,853	6,342
Unfilled Orders	29,138	6,663	24,407	5,769	20,986	5,576	28,234	7,493	27,700	8,137	24,532	7,281
	5/5/41		5/12/41		5/19/41		5/26/41		6/2/41		6/9/41	
Stock	34,254	7,373	36,595	8,061	37,610	8,577	39,384	9,284	34,379	9,064	30,066	9,199
Unfilled Orders	20,370	5,822	17,987	4,682	30,069	7,801	29,237	7,202	47,517	12,978	40,341	11,842
	6/16/41		6/23/41		6/30/41		7/7/41		7/14/41		7/21/41	
Stock	27,979	9,287	26,373	9,163	25,576	9,114	20,464	8,580	19,370	8,524	15,965	7,764
Unfilled Orders	36,115	11,152	34,564	10,474	39,427	10,143	33,473	8,611	45,454	12,724	39,448	11,032
	7/28/41		8/4/41		8/11/41		8/18/41		8/25/41		9/1/41	
Stock	16,470	8,710	14,441	8,397	13,981	9,359	14,623	9,260	17,263	9,665	16,866	9,121
Unfilled Orders	33,550	10,684	26,889	8,727	34,213	14,788	32,723	14,278	30,470	13,226	26,388	12,360
	9/8/41		9/15/41		9/22/41		9/29/41		10/6/41		10/13/41	
Stock	18,089	7,881	18,960	7,360	17,677	6,354	17,587	4,971	16,693	3,242	17,474	2,693
Unfilled Orders	50,193	19,123	52,945	21,870	45,443	19,632	40,511	17,214	33,705	13,181	27,126	10,270
	10/20/41		10/27/41		11/3/41		11/10/41		11/17/41		11/24/41	
Stock	18,534	2,857	21,720	2,929	21,750	3,620	23,257	4,359	22,999	4,536	22,199	4,376
Unfilled Orders	33,262	11,878	32,357	10,604	27,483	9,364	23,648	8,672	29,713	12,580	34,103	11,553
	12/1/41		12/8/41		12/15/41		12/22/41		12/29/41		1/5/42	
Stock	21,586	4,410	20,367	4,978	20,340	4,872	17,752	4,723	18,010	4,766	16,214	4,548
Unfilled Orders	31,361	10,094	25,305	8,411	49,671	16,543	44,620	15,144	41,491	13,841	35,146	12,321
	1/12/42		1/19/42		1/26/42		2/2/42		2/9/42		2/16/42	
Stock	16,054	4,841	13,488	3,773	10,540	2,623	7,401	2,396	6,206	1,848	6,351	2,040
Unfilled Orders	31,629	12,198	54,557	20,390	44,405	17,454	35,784	14,595	28,069	12,485	21,793	10,343

Joint Exhibit 6-F.

CORN PRODUCTS REFINING COMPANY

ANALYSIS OF "FEED SITUATION" FROM JANUARY 7, 1941 TO DECEMBER 21, 1942, INCLUSIVE (In Tons)

	2/23/42		3/2/42		3/9/42		3/16/42		3/23/42		3/30/42	
	Feed	Gluten Meal	Feed	Gluten Meal	Feed	Gluten Meal	Feed	Gluten Meal	Feed	Gluten Meal	Feed	Gluten Meal
Stock	7,118	1,680	5,162	1,177	4,632	1,177	5,371	1,219	6,824	1,067	10,069	1,334
Unfilled Orders	40,710	17,716	32,380	14,832	25,750	12,139	21,214	9,304	26,939	13,696	29,349	16,589
	4/6/42		4/13/42		4/20/42		4/27/42		5/4/42		5/11/42	
Stock	11,688	2,032	12,970	1,809	12,584	1,621	12,807	1,580	11,477	1,581	11,840	1,818
Unfilled Orders	40,550	20,099	36,903	18,062	30,597	15,787	24,582	13,650	27,509	11,757	22,389	10,165
	5/18/42		5/25/42		6/1/42		6/8/42		6/15/42		6/22/42	
Stock	11,837	1,954	13,474	2,091	13,543	2,918	14,017	3,514	14,312	3,906	13,641	4,319
Unfilled Orders	17,446	8,223	31,296	12,408	27,525	11,374	26,741	8,984	22,034	7,231	40,203	11,921
	6/29/42		7/6/42		7/13/42		7/20/42		7/27/42		8/3/42	
Stock	14,881	5,212	13,377	5,080	13,079	5,034	12,226	4,942	11,753	4,969	9,957	4,927
Unfilled Orders	37,338	10,757	30,916	9,306	25,157	7,251	42,827	13,125	39,372	11,805	30,692	10,598
	8/40/42		8/16/42		8/24/42		8/31/42		9/7/42		9/14/42	
Stock	10,393	5,117	9,993	4,933	9,546	4,917	10,114	5,468	10,598	5,056	10,883	4,599
Unfilled Orders	25,269	9,090	43,282	13,603	40,442	13,451	35,786	11,723	29,588	9,875	26,371	8,772
	9/21/42		9/28/42		10/5/42		10/12/42		10/19/42		10/26/42	
Stock	9,922	4,324	9,557	3,800	8,047	3,368	7,407	2,572	6,649	2,372	6,228	1,897
Unfilled Orders	20,305	6,632	42,566	13,593	38,589	14,367	31,698	12,545	26,617	10,731	51,317	14,969
	11/2/42		11/9/42		11/16/42		11/23/42		11/30/42		12/7/42	
Stock	5,949	1,528	5,366	1,317	5,061	957	4,370	678	3,739	765	3,016	641
Unfilled Orders	43,823	12,928	35,219	11,194	27,566	8,811	19,254	6,954	41,292	10,590	34,292	9,166
	12/14/42		12/21/42									
Stock	2,273	435	2,253	756								
Unfilled Orders	26,356	7,454	19,973	5,456								

Joint Exhibit 6-F.

CORN PRODUCTS REFINING COMPANY

WEEKLY REPORTS, STOCKS, & ORDERS

(In Bushels) (000 omitted)

	1/1/41		1/12/41		1/19/41		1/26/41		2/1/41		2/9/41	
	Stock	Orders	Stock	Orders	Stock	Orders	Stock	Orders	Stock	Orders	Stock	Orders
Cerelose	1,425	1,125	1,290	830	1,200	510	1,155	1,400	1,120	1,125	1,225	1,060
Bulk	1,210	925	1,190	950	1,210	780	1,185	700	1,130	575	1,260	660
Package	695	500	680	500	675	500	630	500	650	500	675	500
Total	3,330	2,550	3,160	2,280	3,085	1,790	2,970	2,600	2,900	2,200	3,160	2,220
	2/16/41		2/23/41		3/1/41		3/9/41		3/16/41		3/23/41	
Cerelose	1,275	750	1,365	520	1,280	1,050	1,340	1,845	1,320	2,040	1,335	2,075
Bulk	1,350	460	1,385	480	1,400	640	1,460	550	1,455	800	1,425	1,585
Package	690	500	700	500	730	500	730	500	775	500	680	500
Total	3,315	1,710	3,450	1,500	3,410	2,190	3,530	2,895	3,550	3,340	3,440	4,160
	4/1/41		4/6/41		4/13/41		4/20/41		4/27/41		5/1/41	
Cerelose	1,130	2,010	960	2,440	790	3,980	785	3,700	745	3,415	805	3,385
Bulk	1,460	1,770	1,460	2,080	1,450	1,990	1,475	2,790	1,500	2,350	1,525	2,220
Package	750	500	780	500	780	500	780	500	735	500	730	500
Total	3,340	4,280	3,200	5,020	3,020	6,470	3,040	6,990	2,980	6,265	3,060	6,105
	5/11/41		5/18/41		5/25/41		6/1/41		6/8/41		6/15/41	
Cerelose	765	3,010	810	2,750	880	2,510	890	2,220	940	2,210	960	2,210
Bulk	1,595	1,975	1,505	2,570	1,450	2,610	1,490	3,820	1,390	3,115	1,470	3,570
Package	670	500	635	500	600	500	610	500	585	500	550	500
Total	3,030	5,485	2,950	5,820	2930	5,620	2,990	6,540	2,915	5,825	2,980	6,280
	6/22/41		7/1/41		7/6/41		7/13/41		7/20/41		7/27/41	
Cerelose	1,010	3,360	980	3,915	970	3,650	880	3,290	740	3,070	650	2,460
Bulk	1,430	2,970	1,570	3,055	1,480	4,030	1,405	3,675	1,340	3,170	1,390	3,595
Package	510	500	520	500	520	500	575	500	610	500	600	500
Total	2,950	6,830	3,070	7,470	2,970	8,180	2,860	7,465	2,690	6,740	2,640	6,555
	8/1/41		8/10/41		8/17/41		8/24/41		9/1/41		9/7/41	
Cerelose	650	2,070	620	2,920	635	3,380	580	3,020	600	2,650	480	2,210
Bulk	1,500	3,190	1,630	2,460	1,730	3,095	1,695	2,745	1,765	2,870	1,800	2,810
Package	670	500	720	500	800	500	860	500	910	500	1,000	500
Total	2,820	5,760	2,970	5,880	3,165	6,975	3,135	6,265	3,275	6,020	3,280	5,520
	9/14/41		9/21/41		10/1/41		10/9/41		10/16/41		10/23/41	
Cerelose	455	2,070	430	1,870	420	1,755	435	1,665	500	1,565	525	1,605
Bulk	1,790	2,610	1,770	2,505	1,780	2,695	1,680	2,825	1,860	2,455	1,655	2,310
Package	1,015	500	1,045	500	1,010	500	1,090	500	1,110	500	1,140	500
Total	3,260	5,180	3,245	4,875	3,210	4,950	3,205	4,990	3,470	4,520	3,320	4,415

Joint Exhibit 6-F.

CORN PRODUCTS REFINING COMPANY

WEEKLY REPORTS, STOCKS, & ORDERS

(In Bushels) (000 omitted)

	11/1/41		11/6/41		11/13/41		11/21/41		11/28/41		12/1/41	
	Stock	Orders	Stock	Orders	Stock	Orders	Stock	Orders	Stock	Orders	Stock	Orders
Cerelose	540	1,440	625	1,410	660	1,450	715	1,360	725	1,230	785	1,520
Bulk	1,925	2,010	1,940	1,700	2,060	1,820	2,170	1,500	2,245	2,270	2,335	1,940
Package	1,165	500	1,205	500	1,240	500	1,275	500	1,260	500	1,260	500
Total	3,630	3,950	3,770	3,610	3,960	3,770	4,160	3,360	4,230	4,000	4,380	3,960
	12/11/41		12/17/41		12/26/41		1/1/42		1/8/42		1/15/42	
Cerelose	840	1,645	860	1,925	890	2,220	900	2,160	850	2,190	830	2,100
Bulk	2,200	2,075	2,250	2,025	2,340	1,790	2,350	1,690	2,530	1,720	2,650	1,900
Package	1,290	500	1,330	500	1,340	500	1,310	500	1,250	500	1,230	500
Total	4,330	4,220	4,440	4,450	4,570	4,510	4,560	4,350	4,630	4,410	4,710	4,500
	1/22/42		2/1/42		2/5/42		2/12/42		2/19/42		3/1/42	
Cerelose	740	2,060	770	2,000	730	1,980	780	1,920	725	1,800	660	2,100
Bulk	2,650	1,660	2,720	2,000	2,790	2,020	2,810	2,000	2,885	2,010	2,850	2,090
Package	1,180	500	1,120	500	1,100	500	1,090	500	1,100	500	1,160	500
Total	4,570	4,220	4,610	4,500	4,620	4,500	4,680	4,420	4,720	4,310	4,670	4,690
	3/5/42		3/12/42		3/27/42		4/1/42		4/9/42		4/16/42	
Cerelose	610	2,180	630	2,190	615	2,074	625	2,070	611	1,973	572	1,912
Bulk	2,810	2,020	2,740	2,030	2,496	1,376	2,660	1,260	2,670	1,174	2,697	1,210
Package	1,070	500	1,030	500	967	612	935	500	894	500	899	500
Total	4,490	4,700	4,400	4,720	4,078	4,062	4,220	3,830	4,175	3,647	4,168	3,622
	4/23/42		5/1/42		5/7/42		5/14/42		5/21/42		6/1/42	
Cerelose	600	1,877	590	1,757	565	1,734	526	1,692	542	1,725	536	1,641
Bulk	2,840	1,206	2,946	1,223	2,991	1,820	2,941	1,641	3,063	1,775	2,815	1,781
Package	825	500	844	500	817	500	796	500	776	500	831	500
Total	4,265	3,583	4,380	3,480	4,373	4,054	4,263	3,833	4,381	4,000	4,182	3,922
	6/4/42		6/11/42		6/18/42		6/25/42		7/1/42		7/9/42	
Cerelose	499	1,780	465	1,858	526	1,842	489	1,903	470	1,930	435	2,130
Bulk	2,761	1,596	2,812	2,452	2,823	2,264	2,720	2,113	2,760	1,885	2,520	1,778
Package	817	500	817	500	877	500	891	500	930	500	900	500
Total	4,077	3,876	4,094	4,810	4,226	4,606	4,100	4,516	4,160	4,315	3,855	4,408

Joint Exhibit 6-F.

CORN PRODUCTS REFINING COMPANY

WEEKLY REPORTS, STOCKS, & ORDERS

(In Bushels) (000 omitted)

	7/16/42		7/23/42		8/1/42		8/6/42		8/13/42		8/20/42	
	Stock	Orders	Stock	Orders	Stock	Orders	Stock	Orders	Stock	Orders	Stock	Orders
Cerelose	388	2,018	398	2,036	397	2,105	349	2,120	394	2,269	359	2,458
Bulk	2,500	1,662	2,444	2,707	2,469	2,733	2,447	2,715	2,345	2,613	2,339	2,681
Package	915	500	950	500	991	500	982	500	1,030	500	1,061	500
Total	3,803	4,180	3,792	5,243	3,857	5,338	3,778	5,335	3,769	5,382	3,759	5,639
	8/27/42		9/1/42		9/10/42		9/17/42		9/24/42		10/1/42	
Cerelose	337	2,401	342	2,386	377	2,133	348	2,040	327	1,988	352	1,890
Bulk	2,280	2,521	2,192	2,354	2,085	2,344	1,929	2,217	1,858	2,097	1,773	2,954
Package	1,023	500	1,009	500	1,046	500	1,061	850	1,042	850	1,053	850
Total	3,640	5,422	3,543	5,240	3,508	4,977	3,338	5,107	3,227	4,935	3,178	5,694
	10/8/42		10/15/42		10/22/42		10/29/42		11/1/42		11/12/42	
Cerelose	400	1,798	438	1,614	462	1,513	452	1,452	458	1,488	544	1,254
Bulk	1,642	2,798	1,574	2,524	1,479	2,460	1,368	2,469	1,328	2,596	1,261	2,547
Package	1,028	850	1,033	850	963	850	973	850	975	850	1,001	850
Total	3070	5,446	3,045	4,988	2,904	4,823	2,793	4,771	2,761	4,934	2,806	4,651
	11/19/42		11/26/42		12/1/42		12/10/42		12/17/42		12/24/42	
Cerelose	554	1,153	553	1,150	584	1,059	675	901	656	889	624	993
Bulk	1,135	2,545	1,041	2,946	990	2,740	1,122	2,720	1,026	2,658	1,052	3,652
Package	945	850	938	850	923	850	899	850	877	850	858	850
Total	2,634	4,548	2,532	4,946	2,497	4,649	2,696	4,471	2,559	4,397	2,534	5,495

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Joint Exhibit 7-G.

Graph for 1942, bringing up to date Joint Exhibit 7-G
809 received in evidence Tax Court Docket No. 20399 (1940).

(PHOTOPRINT.)

[*For the Convenience of Court and Counsel This Exhibit (Photostatic Copy) Is Bound in on the Opposite Page.*]

810

[redacted]

CORN PRODUCTS REFINING COMPANY - YEAR 1942

LEGEND

NOTES ON HAND - FROM WEEKLY REPORTS OF STOCK AND ORDERS

FUTURES OWNED - FROM DAILY CORN REPORTS

Petitioner's Exhibit 8.

814

AGREEMENT made this 1st day of June, 1942, between Corn Products Refining Company, a New Jersey corporation, hereinafter called "Seller", party of the first part, and The Huron Milling Company, a corporation of Michigan, hereinafter called "Buyer", party of the second part, this agreement amending and superseding an original agreement dated April 21, 1927, as amended.

NOW, THEREFORE, In consideration of the premises the parties hereto do hereby agree as follows:

815 1. *Quantity.* Seller agrees to manufacture and sell to Buyer or on its order, and Buyer agrees to purchase each year from Seller, a minimum of Fifteen Million (15,000,000) pounds of Thick and Thin Boiling Pearl and other Special Starches. Buyer shall have the right to purchase and Seller agrees to sell Buyer up to an aggregate of Seventy Million (70,000,000) pounds in any calendar year during the term hereof; provided that the total purchases of Thin Boiling Starch shall not be in excess of Thirty Million (30,000,000) pounds and the total purchases of Edible Starches shall not be in excess of Five Million (5,000,000) pounds in any calendar year,
816 nor shall Seller be obligated to deliver in any three consecutive months more than 25% of the total annual maximum quantities of all products.

2. *Quality.* Such of the foregoing products as are now manufactured by Seller shall be its usual standard quality; other products to be manufactured by Seller hereunder shall be made according to and in compliance with specifications, formulae, and manufacturing methods therefor furnished by Buyer. Buyer shall have the right to suggest changes in the specifications and formulae of the commodities specified in paragraph 1 or the manner of their processing to effect a lower cost and shall

be entitled to the savings resulting therefrom, except 817
that the quantities above mentioned may not be changed without the consent of Seller and Seller's proportional margin of profit on any commodity shall not be reduced below that realized by Seller at the date of this contract, nor shall the Seller be required to incur any expense in providing additional facilities or making changes in existing processes which interrupt or retard its regular rate of production.

3. *Shipments.* To destination as ordered by Buyer.

4. *Deliveries.* F. O. B. cars at any of Seller's factories 818
at Seller's option, freight adjusted to Chicago basis. In case of shipment in mixed cars with other products of Seller, Buyer to be charged proportionate cost of actual freight, cartage and warehousing.

5. *Price.* To be calculated on an estimated base price of $1.87 per one hundred pounds for Thick Boiling Pearl Starch (12% moisture) f. o. b. cars Chicago in bulk (except as hereinafter provided) when Seller's

cost of corn at Argo (16% moisture) is 70¢ per bushel, cost of coal at Argo is $3.00 per ton and 819
average hourly base rate of pay for labor (including Social Security taxes) in the Wet Starch House at Argo is 76½¢, and Seller's price for feed (Chicago) is $28.00 per short ton, and price for crude corn oil (Chicago) is $8.00 per one hundred pounds.

Such estimated base price shall be proportionately

increased or decreased at the rate of 3¢ per one hundred pounds for each corresponding increase or decrease of 1¢ per bushel in such cost of corn, also

820 increased or decreased, at the rate of 2¢ per one hundred pounds for each corresponding decrease or increase of $1.00 per ton in such price of feed, also

increased or decreased at the rate of 4¢ per one hundred pounds, for each corresponding decrease or increase of 1¢ per pound in such price for crude corn oil, also

increased or decreased at the rate of 2½¢ per one hundred pounds for each corresponding increase or decrease of $1.00 per ton in such cost
821 of coal, also

increased or decreased at the rate of ½¢ per one hundred pounds for each corresponding increase or decrease of 2¢ per hour in such average hourly base rate of pay for labor.

The estimated base price for Thick Boiling Pearl Starch (12% moisture) delivered in any calendar month, calculated as above provided, shall never exceed Seller's average market price for such product in bulk f. o. b. Chicago in the general market, exclusive of packages, during such month.

822 If, in any calendar month, Seller's costs, exclusive of the cost of corn, coal and labor, shall be over or under such costs as of June 1, 1942, to such extent as to render the base price charged for Thick Boiling Pearl Starch, delivered hereunder during such month, unfair or unjust to either party, such base price shall be correspondingly proportionately adjusted. In case the parties are unable to agree on the adjustments so to be made, such adjustments shall be determined by three arbitrators, one of whom shall be appointed by each of the parties hereto and the two so appointed

Petitioner's Exhibit 8.

shall select the third. The decision of a majority of such arbitrators shall be final. 823

All bags, barrels, cartons, packages, etc., to be added at cost plus average packing cost.

Buyer agrees to pay Seller for all products manufactured hereunder and delivered to Buyer, or on its order, the following differentials over such estimated base price of Thick Boiling Pearl Starch:

Ordinary and Edible Powdered Starches (10% moisture) 10¢ per one hundred pounds;

Thin Boiling Pearl Starch (12% moisture) 35¢ per one hundred pounds; 824

Thick or Thin Crystal Starches, either machine or hand packed, 45¢ per one hundred pounds;

Large Crystals requiring about two weeks to manufacture, 55¢ per one hundred pounds.

In case the differential existing on June 1, 1942, between Seller's general market price for Ordinary and Edible Powdered Starches, Thin Boiling Pearl Starch, Thick or Thin Crystal or Large Crystal Starches, and Seller's general market price for Thick Boiling Pearl Starch shall be increased or decreased in any calendar month, the price differential on such product, as above specified, shall 825 be correspondingly proportionately adjusted, provided, however, that Buyer's differential shall, at no time, be lowered to an amount which reduces Seller's margin of profit on such product (as customarily calculated) below that realized by Seller on Thick Boiling Pearl Starch delivered by Seller during such month.

In the event that the Buyer shall purchase from Seller any Special Starches for which a price differential over the estimated base price of Thick Boiling Pearl Starch is not provided in this contract, Seller agrees that the price differential

826 over such estimated base price shall, in no calendar month, exceed Seller's price differential on such products over its regular market price for Thick Boiling Pearl Starch in the general market prevailing during said month.

It is understood that finished products will analyze approximately 12% moisture. In case Thick Boiling Pearl Starch shipped to Harbor Beach for uses other than dry blending, analyzes greater or less than 12% moisture, the estimated base price for such starch shall be adjusted accordingly.

827 6. In the event that Buyer shall satisfy Seller that competition of other manufacturers has forced Buyer to sell any of such Special Starches during any calendar month at prices which shall average less than 15¢ per 100 pounds over the price charged by Seller for such product hereunder during such month, Seller shall reduce its price on such products to such sum as shall equal 15¢ per 100 pounds under Buyer's average selling price obtained therefor in the general market during such month, provided, however, that Seller shall not be required to make any reduction which would bring the price hereunder for such products more than 10¢ per 828 100 pounds under a sum equal to the estimated base price of Thick Boiling Pearl Starch, plus the differential applicable to such products hereunder.

7. It is understood that the secret specifications, formulae, and manufacturing methods which have been or shall be disclosed to Seller by Buyer, in carrying out the provisions of this contract, are the exclusive property of Buyer and that Seller will not use any of such specifications, formulae, or manufacturing methods, either directly or indirectly, in the manufacture of any of such products for itself or for others, nor disclose any thereof to any other person, firm, or corporation and that this

clause of this Agreement shall be binding during the 829
term of this contract and after the termination thereof. Provided, however, that nothing herein contained shall be construed to prevent Seller from manufacturing and selling similar products under any formulae, processes, or methods which it may now own or which may become commonly known or be acquired from others, or from using similarly made products as an ingredient in or base material for the manufacture of other products not now made by Buyer.

8. Seller agrees to manufacture and hold in stock reasonable quantities of the products to be made by 830
Seller under the specifications, formulae, or manufacturing methods furnished to it by Buyer hereunder. Buyer shall, however, from time to time notify Seller of the quantities of such respective products required to be kept in stock, which total quantities, however, shall at no time exceed two months' normal requirements of Special Starches and one month's normal requirements of Thin Boiling.

9. Seller shall not be liable for deliveries under this contract in case of strikes, shortage of cars, corn or fuel, extraordinary or excessive demand, or for any 831
other cause beyond its reasonable control, but in case Seller is not able to promptly fill orders for all of its customers, Seller agrees to give Buyer equal preference in shipments and fill Buyer's orders as promptly as possible, having due regard to all of Seller's customers.

10. Seller agrees to furnish buyer monthly statements showing the stocks of products held by Seller for Buyer's account on the last day of each preceding month.

11. Thick Boiling Pearl, Powdered and Edible Starches to be delivered by Seller hereunder are sold for the use of Buyer in its own manufacturing business and

832 not to be sold by it without Seller's consent except as the same have been so modified and blended with other products that they have become different in type or working quality.

12. Cost of corn, coal, labor and other items and Chicago price for feed and crude corn oil, used in making adjustments of the estimated base price for Thick Boiling Pearl Starch under the provisions hereof, shall be determined by the methods customarily adopted by Seller in the conduct of its business, which methods and the computations of adjustments thereunder shall at
833 all times be open to inspection by a representative of the Buyer.

13. All deliveries made by Seller hereunder in any one month shall be invoiced to Buyer as follows: Not later than the 7th day of the succeeding month, a preliminary invoice shall be sent carrying estimated prices of all the preceding month's deliveries and not later than the 27th, a final invoice shall be sent carrying definite prices. Payment by Buyer shall be made upon receipt of final invoice.

14. This contract shall commence on the 1st day of
834 June, 1942, and continue for the term of ten (10) years thereafter and until the 31st day of May, 1952, and at the option of the Buyer, to be exercised by giving written notice thereof to Seller on or before January 1, 1952, may be extended for an additional period of ten (10) years, making twenty (20) years in all unless sooner terminated by either party under the following conditions:

(a) In the event that the total amount of corn starch products purchased by Buyer from Seller in any calendar year during the term of this contract shall be less than fifteen million (15,000,000) pounds in the aggregate, Seller shall have the right

to terminate this contract by giving Buyer written notice eighteen (18) months in advance of such termination. 835

(b) In case either party hereto shall hereafter be consolidated or merged with any other corporation, or control of a majority of the voting capital stock thereof acquired by another corporation, either party may terminate this contract on twelve (12) months notice in writing given to the other.

15. This contract shall not be assignable by either party without the consent of the other. 836

16. This contract shall be deemed an amendment of and shall supersede and terminate the contract made between the parties hereto dated April 21, 1927.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed the day and year first above written.

CORN PRODUCTS REFINING COMPANY
By (sgd.) LIMUS C. COGGAN
Vice President 837

Attest:

(sgd.) W. L. MORAN
Secretary

THE HURON MILLING COMPANY
By (sgd.) GEORGE J. JENKS
President

Attest:

(sgd.) G. G. SHIPLEY.
Secretary

Petition for Review.

838

THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 22074

CORN PRODUCTS REFINING COMPANY,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

839

To the Honorable Judges of the United States Court of Appeals for the Second Circuit

COMES NOW Corn Products Refining Company by its attorneys, Jay O. Kramer, Esq., and Samuel A. McCain, Esq., and respectfully shows:

1.

JURISDICTION

840

That petitioner is a corporation organized under the laws of the State of New Jersey on February 6, 1906, with its principal office at 17 Battery Place, New York 4, New York.

That the income and excess profits tax return for the calendar year 1942 was filed with the Collector of Internal Revenue, Second District of New York, whose office is within the jurisdiction of this honorable Court. The Court in which review of this cause is sought is the United States Court of Appeals for the Second Circuit.

The petitioner files this Petition for review pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

841

2.

NATURE OF THE CONTROVERSY

The nature of the controversy is as follows:

Petitioner is a corporation organized under the laws of the State of New Jersey on February 6, 1906. It filed its income and excess profits tax returns for the year 1942 with the Collector of Internal Revenue, Second District, New York. The taxes in controversy were excess profits taxes in the amounts of $1,520,519.39, and $14,487.94, respectively.

842

Petitioner is a nationally-known corporation engaged in the manufacture and sale of corn products, including starches, sugars, syrups, oils and feeds. The maximum amount of raw corn which petitioner could store in its own plants during 1942 was 2,303,000 bushels, or approximately a three weeks' supply. The daily grind capacity of petitioner's plants during 1942 was 170,000 bushels. Similar conditions existed in prior years. It had been the custom of petitioner for a number of years prior to 1942 to purchase corn futures contracts. A corn future consists of a contract to buy 5,000 bushels of corn, or some multiple thereof, of a stated quality, at a stated price, for delivery during a stated month in the future. Such contracts called for delivery within eleven months or less from the date of contract. Such contracts are freely dealt with on various commodity exchanges, through brokers. The buyer furnishes his broker with margin, a percentage of the contract price. During the years prior to 1942, petitioner engaged in the purchase and sale of corn futures. It was found to be far less expensive to purchase corn futures by putting up a small amount of margin than to buy and store additional raw corn beyond petitioner's own limited capacity. The margin charges of

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844 futures contracts were less than storage and carrying charges in public elevators. This program also avoided financing the purchase of raw corn by large bank loans.

The corn futures contracts were not sold to customers in the regular course of petitioner's business but were disposed of through brokers on a regulated exchange, nor were such contracts included in inventory, neither were they subject to depreciation.

Petitioner suffered severe losses in the droughts of 1934 and 1936 when the price of corn rose sharply. One of its major products, cerelose, a refined corn sugar, competes with cane and beet sugar. Since it is a comparatively 845 new sugar, its price to the consumer is generally less than beet or cane sugar, with which it competes. The two droughts caused the cost of cerelose to rise out of proportion to its selling price. As a result in 1937, petitioner lost money on its cerelose sales. In an attempt to meet this condition, petitioner envisioned a plan or program in 1937 whereby it could buy corn futures whenever it considered the price of corn cheap and would establish a long futures position in the neighborhood of 12,000,000 bushels. This position would be built up and maintained during the year until it could be ascertained to some degree of cer- 846 tainty that no drought was likely to occur. The position would then be liquidated in part when, usually in July, favorable crop conditions were forecast.

The proposed plan was never put into full operation. Petitioner found it economically impractical to build up and carry the planned long position of 12,000,000 bushels. The Commodity Exchange Authority intervened in petitioner's program and objected to the size of petitioner's position in 1938. A complaint was brought by that Authority, which was dismissed in 1940.

In 1939, the outbreak of the European war rendered any plan unnecessary. The price of cane and beet sugar rose substantially due to war conditions, carrying with it

the price of cerelose. The need to stabilize the cost of 847
cerelose thereupon disappeared. The petitioner never was able to put its plan or program into full effect.

The petitioner's accounting practice was to account for its profits or losses on corn futures in an account called "Corn Miscellaneous", the balance in that account at the end of each year was debited or credited to cost of sales. In 1942, petitioner had a net loss of $109,969.38, which was treated in petitioner's return as an increase in the "cost of goods sold". In the four previous years, the transactions had resulted in the following gains or losses: 848

Year	Net Gain (treated as a reduction of cost of goods sold)	Net Loss (treated as an addition to cost of goods sold)
1938	———	$815,462.57
1939		424,437.54
1940	$680,587.39	
1941	180,056.23	

The general sales policy of petitioner at all times material, was to enter into contracts providing for shipment within thirty days. A price was named, but a provision was made that if the price in effect on the date of delivery was lower, the buyer was to have the advantage of such 849
lower price.

These facts give rise to two questions of law:

1. Were the transactions of petitioner in corn futures capital transactions under Section 117 of the Internal Revenue Code, and
2. Were such transactions subject to the "wash sales" provisions under Section 118.

A petition to review these identical issues is filed simultaneously herewith for the calendar year 1940. In addi-

850 tion to these issues, there are further matters in controversy.

During the year 1939, petitioner had certain subsidiaries in Brazil and in Italy. On January 12, 1939, Maizena, Brazil, S. A., a wholly owned subsidiary, declared a dividend payable in the amount of 2,175,000$000 Milreis. Petitioner actually received in the United States 100,649$900 Milreis in 1939. Petitioner made a loan of the dividend declared by Maizena, to another wholly owned Brazilian subsidiary, Refinacoes de Milho, Brazil.

In the same year, various Italian corporations declared
851 dividends in the sum of 4,496,327 Lire to petitioner, a stockholder thereof. During the year 1939, petitioner actually converted 410,000 Lire at 2.1c per Lira. Upon the declaration of dividends, monies were either deposited in bank accounts to the credit of petitioner or were turned over to other Italian subsidiaries of petitioner for use.

The Revenue Agent, in examining the years 1936 through 1939, required petitioner to treat the "blocked income" as being received at a basis of zero, and thereafter, to report as capital gain the amount received upon actual conversion into dollars. Petitioner seeks to treat the Italian and Brazilian dividends as income in 1939. The result of such
852 treatment would be to increase its excess profits credit and its excess profits credit carry-overs.

Another issue involves the question of petitioner's unused excess profits credit carry-over from 1941 to 1942. In 1941, petitioner had no excess profits tax liability. It did, however, have $436,945.36 of conceded abnormal income in 1941 attributable to pre-excess profits tax years. In computing the unused excess profits credit carry-over from 1941 to 1942, respondent did not exclude the amount of 1941 abnormal income, i.e., $436,945.36, from petitioner's 1941 excess profits net income, and as a consequence, the excess profits credit carry-over to 1942 was not increased by that amount.

The questions still in controversy are four: 853

1. Whether the purchase and sale of corn futures contracts by this petitioner were capital transactions, subject to the limitations of Section 117 of the Internal Revenue Code, or whether the gains and losses were from "hedges", resulting in ordinary income and ordinary deductions.

2. Whether the provisions of Section 118 which concerns "wash sales" has application to the corn futures transactions carried on by petitioner.

3. Whether petitioner had income in 1939 from Italian 854
and Brazilian dividends, thereby increasing its excess profits credit and its unused excess profits credit carry-overs for the year 1942.

4. Should the unused excess profits credit carry-over from 1941 be increased by the sum of $436,945.36, constituting conceded abnormal income in the year 1941, which respondent nevertheless did not exclude from that year's excess profits net income in computing the excess profits credit carry-over in 1942.

Respondent has found that there was a deficiency in excess profits taxes and declared value excess profits taxes 855
in the amounts of $1,520,519.39, and $14,487.94, respectively, against petitioner for the year 1942.

3.

PETITION FOR REVIEW

On March 9, 1948, petitioner filed with The Tax Court of the United States its petitions for redetermination of deficiency. Respondent filed its answer on April 20, 1949. The proceeding came on for a hearing on June 18, 1951,

856 and on June 30, 1952, the Court promulgated its initial opinion. It held that petitioner's transactions in corn futures were not capital transactions within the meaning of Section 117 of the Internal Revenue Code. The Court also found that the "wash sales" provisions of Section 118 of the Internal Revenue Code did not apply to petitioner's transactions in corn futures. The Court further found that petitioner did not sustain income in the year 1939 from dividends from Italian and Brazilian sources. The Court further found that the Commissioner did not commit error in including the net abnormal income for the year 1941 in excess profits net income for the purpose of
857 computing the unused excess profits credit carry-over to 1942. On other issues for which no review is sought, the Court held for the petitioner, except as to the computation of the amount of the relief. See 20 TC 68.

The Court entered its decision on the 15th day of June, 1953, and decided there is a deficiency of $1,221,879.44 in excess profits taxes, and of $14,487.94 in declared value excess profits taxes, respectively, for the year 1942.

4.

858 ASSIGNMENT OF ERRORS

Petitioner assigns as errors the following acts and omissions of The Tax Court of the United States:

1. The finding of The Tax Court of the United States that the transactions of petitioner in corn futures contracts during the year 1942 were not capital transactions under Section 117 of the Internal Revenue Code.

2. The finding of The Tax Court of the United States that the "wash sales" provisions of Section 118 of the Internal Revenue Code did not apply to petitioner's transactions in corn futures contracts for 1942.

3. The finding of The Tax Court of the United States 859
that petitioner did not have income in the year 1939 from Italian and Brazilian dividends, which would have had the effect of increasing its excess profits credit and its unused excess profits credit carry-over for the year 1942.

4. The finding of The Tax Court of the United States that the net abnormal income in the sum of $436,945.36 in the year 1941 should not be excluded from 1941 excess profits net income in computing the excess profits credit carry-over to 1942.

WHEREFORE, your petitioner petitions that the decision 860
of The Tax Court of the United States be reviewed by the United States Court of Appeals for the Second Circuit; that a transcript of the record be prepared in accordance with the rules of said Court and transmitted to the Clerk of said Court for filing; that proper action be taken to the end that the errors complained of may be reviewed by said Court.

Respectfully submitted,

/s/ JAY O. KRAMER
Jay O. Kramer 861
c/o Milton M. Bernard
10. E. 40th Street
New York 16, New York

/s/ SAMUEL A. McCAIN
Samuel A. McCain
17 Battery Place
New York 4, New York

(Verified June 23, 1953.)

Notice of Filing Petition for Review.

862

[SAME TITLE.]

To KENNETH W. GEMMILL,
Acting Chief Counsel,
Bureau of Internal Revenue.

You are hereby notified that the above-named petitioner did, on the 25th day of June, 1953, file with the Clerk of The Tax Court of the United States, at Washington, D. C.,
863 a petition for review by the United States Court of Appeals for the Second Circuit, of the decision of this Court heretofore rendered in the above-entitled case. Copy of the petition for review as filed is hereto attached and served upon you.

Dated this 25th day of June, 1953.

(Signed) VICTOR S. MERSCH
Victor S. Mersch,
Clerk,
The Tax Court of the United States.

864

Service of copy of Petition for Review acknowledged this 25th day of June, 1953.

KENNETH W. GEMMILL
Chief Counsel. CAR

Bureau of Internal Revenue,
Attorney for Respondent.

Designation of Contents of Record on Review.

865

[SAME TITLE.]

To the Clerk of the Tax Court of the United States:

You will please prepare, transmit and deliver to the Clerk of the United States Court of Appeals for the Second Circuit copies duly certified as correct of the following documents and records in connection with the petition for review heretofore filed by petitioner in the above entitled cause:

866

1. Docket entries of all proceedings before The Tax Court.
2. Pleadings before The Tax Court:
   (a) Petition filed the 9th day of March 1949, including annexed copy of deficiency letter and statement attached thereto.
   (b) Answer.
3. Findings of Fact, Opinion and Decision.
4. Official Report of Proceedings before The Tax Court, together with all exhibits in evidence and the partial stipulation of facts. 867
5. Petition for review, together with proofs of service of notice of filing and of service of a copy of petition for review.
6. This Designation of Contents of Record on Review.

868 Said transcript is to be prepared, certified and transmitted as required by law and the rules of the United States Court of Appeals for the Second Circuit.

JAY O. KRAMER
Jay O. Kramer
Attorney for Petitioner on Review
c/o Milton M. Bernard
10 East 40th Street
New York 16, N. Y.

/s/ SAMUEL A. McCAIN
869 Samuel A. McCain
Attorney for Petitioner on Review
17 Battery Place
New York 4, N. Y.

Admission of Service:

Receipt is hereby acknowledged and service is accepted this 8th day of July 1953 of the Designation of Contents of Record on Review filed in the above entitled cause.

870 (Signed) KENNETH W. GEMMILL CAR
Acting Chief Counsel

Bureau of Internal Revenue
Attorney for Respondent on Review

Certificate.

871

THE TAX COURT OF THE UNITED STATES

WASHINGTON

Docket No. 22074

CORN PRODUCTS REFINING COMPANY

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE

Respondent. 872

I, Victor S. Mersch, clerk of The Tax Court of the United States do hereby certify that the foregoing pages, 1 to 146, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 29th day of July, 1953. 873

Last day to file record is August 17, 1953.

VICTOR S. MERSCH
Clerk,
The Tax Court of the United States.

(Seal)

[fol. 292] IN UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1953

Nos. 158 and 159

Argued May 13, 1954. Decided August 25, 1954

Docket Nos. 22809 and 22810

CORN PRODUCTS REFINING COMPANY, Petitioner

against

COMMISSIONER OF INTERNAL REVENUE, Respondent

Before Chase, Chief Judge, Hincks and Harlan, Circuit Judges

Consolidated petitions to review decisions of the Tax Court redetermining a deficiency in the income taxes of the petitioner for 1940 and deficiencies in its excess profits taxes and declared value excess profits taxes for 1942. Affirmed.

Jay O. Kramer, Samuel A. McCain, Attorneys for Petitioner.

[fol. 293] H. Brian Holland, Assistant Attorney General, Ellis N. Slack, Lee A. Jackson, Harry Marselli, Special Assistants to the Attorney General, for Respondent.

OPINION

CHASE, Circuit Judge:

The petitioner, a New Jersey corporation which has its principal office in the City of New York, is engaged in manufacturing and selling corn products, including sugars, starches, oils and feeds. The Commissioner determined a deficiency of $163,804.78 in its income tax for 1940; a deficiency of $1,520,519.39 in its excess profits tax for 1942; and a deficiency of $14,487.94 in its declared value excess profits tax for that year. The Tax Court upheld the Commissioner and petitions to review its decisions have been consolidated for hearing in this court. The opinion of the Tax Court and its findings of fact as to the issues for 1940 are reported at 16 T. C. 395 and familiarity with them will

be assumed. Reference is also made to the unreported opinion and findings of fact of the Tax Court, as to the issues for 1942, in Tax Court Docket No. 22,074.

Four questions are presented as to the tax liability of the petitioner for the years 1940 and 1942. Involving both 1940 and 1942 are questions of the taxability of profits and losses in the purchase and sale of corn futures as ordinary income and loss or as capital gain and loss under Section 117(a) of the Internal Revenue Code, 26 U. S. C. A. § 117(a), and the applicability of Section 118 of the Code; 26 U. S. C. A. § 118, to those transactions. Involving only the tax year 1942, are two questions related to the petitioner's excess profits credit and carry-over.

In its business the petitioner uses large amounts of corn, often as much as 170,000 bushels per day. The maximum [fol. 294] amount of raw corn which it could store during the relevant periods was roughly 2,300,000 bushels, only about three weeks supply, so it decided to deal in corn futures in order to insure a stable price for the raw product by thus eliminating price fluctuations caused by occasional supply shortages on the market. The method adopted was to purchase corn futures through a commodity exchange whenever the price of corn was satisfactorily low and hold them until it could be ascertained whether there would be a crop shortage. Then the futures would be in part liquidated if, and when, need for retaining them ceased because of the condition of the anticipated crop. The method was followed each season.

The petitioner had future sales commitments, but these were mainly of an unfixed character in that the purchaser was given the benefit of the lower of the order price or the delivery date market price. So, with long purchases of futures set against future sales at the order or market price, whichever was lower, the respondent protected itself against commodity price rises but not against declines.

In the years 1940 and 1942 the petitioner's purchases and sales of corn futures resulted respectively in a gain of $680,587.39 and a loss of $109,969.38 and in its tax returns for those years these were treated as items of ordinary income and loss, being entered in petitioners' books as an increase and decrease in cost of goods sold. However, from 1940 to 1946 the Commissioner successfully contended in a

series of instances [1] that dealings in commodity futures contracts gave rise to capital, rather than ordinary, gains and losses and in reliance on those cases the petitioner sought [fol. 295] to have them treated as capital in nature under Section 117 (a) of the Code.

In addition to seeking capital treatment on these items the petitioner also contended that many of the past futures transactions came within the "wash sales" provision of Section 118 which would do away with loss deduction under Section 23(f) and transfer the basis of the "washed" security to the purchased security and, in this case, increase the basis of those futures sold in 1940 and 1942.

The Tax Court held that these commodity transactions gave rise to ordinary income and loss since the petitioner's system of purchasing corn futures "was an integral part of its manufacturing business." It is the position of the petitioner to the contrary that, within the meaning of Section 117(a), commodity futures contracts are "property held by the taxpayer" and do not come within the types of property excluded from the section, not being stock in trade, inventory, property held primarily for sale to customers, or the like, and therefore capital in nature.

In addition to those exclusions specifically provided for in Section 117 the petitioner contends that the courts have set up a "judge-made exception"; that is, that gain and loss from commodity futures transactions will not be given capital treatment when they have been utilized for the commercial purpose known as "hedging." And, even assuming that this "judge-made exception" is proper, it would not be applicable here because the petitioner, so it claims, was not hedging. We think the petitioner has misconstrued the effect both of the cases and of its own dealings.

Hedging is a method of dealing in commodity futures whereby a person or business protects itself against price

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[1] *George W. Covington*, 42 B. T. A. 601; aff'd 5 Cir., 120 F. 2d 768, cert. denied 315 U. S. 822; *Tennessee Egg Co.*, 47 B. T. A. 588; *Trenton Cotton Oil Co.* v. *Commissioner*, 6 Cir., 147 F. 2d 33; *Farmers & Ginners Cotton Oil Co.* v. *Commissioner*, 5 Cir., 120 F. 2d 772, reversing 41 B. T. A. 1083; *Makransky, Estate of Dorothy, Deceased, et al.*, 5 T. C. 397, aff'd 3 Cir., 154 F. 59.

fluctuations at the time of delivery of the product which it sells or buys. *United States* v. *New York Coffee & Sugar* [fol. 296] *Exchange*, 263 U. S. 611. A typical example of hedging occurs when a manufacturer of grain products seeks to stabilize its costs against fixed forward sales prices. Having contracts for the delivery of its grain products to its customers at fixed prices, the manufacturer seeks to set the cost of its related inventory item, grain, by entering into futures contracts for the purchase of it. By so doing the manufacturer may later obtain the necessary grain at a price properly related to the already fixed selling price of his manufactured product and, so far as commodity costs are concerned, the profit from manufacturing is insured.

In *United States* v. *New York Coffee & Sugar Exchange*, *supra*, the Supreme Court set forth three general classifications of dealings in commodity futures: speculation, legitimate capital transactions, and hedging. These classifications have since been adopted as convenient nominal guides by the courts to determine the proper tax consequences of futures transactions.[2] Where futures are dealt with for the purposes of speculation or what is called legitimate capital transactions, they obviously fall outside the possibly relevant exclusions of Section 117(a). In the hedge, however, the property is used in such a manner as to come within the exclusions, for it is a part of the inventory purchase system which is utilized solely for the purpose of stabilizing inventory cost. It is an integral part of the productive process in which the property is held not for investment but for the protection of profit with the intent of disposition when that purpose has been achieved. As such it cannot reasonably be separated from the inventory items and the cost (or profit) from such operations would necessarily be entered in the books of account of the business as part of cost of goods sold. The tax treatment of hedges, then, is not a "judge-made exception" to Section 117(a); [fol. 297] it is simply a recognition by the courts that property used in hedging transactions properly comes within the exclusions of the section.

The futures transactions of this petitioner, it is true,

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[2] See cases cited in footnote 1.

did not constitute what is known as "true" hedging. The true hedge can occur only when forward sales prices are fixed and the relation between commodity purchase and later sales price is insured against both increase and decrease of commodity prices. As the forward sales prices here were based mainly on the lower of order or market prices, the petitioner was protected only against increases in commodity prices and did not have the complete insurance of the true hedge. But this is a distinction presently of no significance. The property here was used for essentially the same purpose and in the same manner as in true hedging. Futures contracts were entered into to stabilize inventory costs and thus protect profit, and whether complete or only partial insurance was thereby obtained is simply a difference in degree, not in kind. Therefore, for the same reasons that the true hedge is not accorded capital treatment under Section 117(a), the kind of transactions with which we are now concerned are not to be regarded as capital ones either.

The petitioner's further contention that the wash sales provision of Section 118 is applicable to its futures transactions rests on *Trenton Cotton Oil Company* v. *Commissioner*, 6 Cir., 147 F. 2d 33, rehearing denied 148 F. 2d 208. With deference, however, we find ourselves unable to agree with that decision. Cf. *Harriss* v. *Commissioner*, 2 Cir., 143 F. 2d 279; *Valley Waste Mills*, 5 Cir., 115 F. 2d 466, cert. denied 312 U. S. 681.

Disallowance of loss deduction under Section 118 occurs only on the sale and purchase of "shares of stock or securities," and only if the stocks or securities purchased [fol. 298] are "substantially identical" with those sold. The transactions here are distiguishable on both grounds, for reasons well stated in the opinion below. On the question of substantial identity the Tax Court said: "Furthermore, a new future commodity contract is not 'substantially identical' with any prior contract even though the quantity involved in each is identical. It would be purely accidental if the new contract was with the same party as the one who had agreed to sell the commodity in the earlier contract. The price would probably be different and the delivery date would certainly be different." And on the

question of whether commodity futures contracts are securities: "it is apparent from the opinion (*Valley Waste Mills v. Page*, 115 F. 2d 466, cert. denied, 312 U. S. 681) that such a future is not a security in any generally recognized sense but simply a contract between two parties in which one agrees to supply at a designated time in the future a stated quantity and quality of goods, upon payment of a stated price and on which a part of the contract price, called a margin, has been paid by the buyer to his broker to bind him until the sale is consummated or the contract is sold * * *" We are in accord and take the above as the correct analysis and disposition of this point.

The third point raised by the petitioner is that the Tax Court erred in not holding that dividends declared by certain foreign corporations and payable to petitioner in 1939 were includible in its income for 1939. The effect of the inclusion of those amounts in 1939 income would be to increase petitioner's excess profits credit and its unused excess profits carry over to the year 1942, and thereby reduce the 1942 excess profits tax.

In 1938 a Brazilian corporation, wholly owned by petitioner, declared a dividend of 2,175,000 Brazilian milreis, payable in 1939. In 1939 four Italian corporations in which [fol. 299] the petitioner was a major stockholder declared and made payable to petitioner dividends totalling 4,496,327 lire. These dividends were, however, payable only in blocked currency. Consistent with its practice of treating blocked foreign dividends as income only when actually received in the United States in dollars, the petitioner entered these dividends on its books of account as deferred income and did not report them as income in 1939 for tax purposes.

In order to prove that the foreign dividends should have been included in 1939 income, it was necessary to show that instead of being blocked the dividends were in fact freely convertible into dollars. The petitioner offered as such proof the fact that in 1939 it had converted 100,649.9 milreis and 410,000 lire into dollars. There was no showing of the manner of conversion. The Tax Court held that this evidence was not sufficient to discharge the petitioner's burden of proof and accordingly held that the foreign dividends were not includible in 1939 income.

The petitioner insists that the Tax Court erred both in putting the burden of proof on the petitioner and in not holding its evidence of conversion of some milreis and lire into dollars to be sufficient proof of free convertibility. As to the burden of proof it is so well settled as not to need much comment that in proceedings before the Tax Court the petitioner must *affirmatively* establish its case. *Edward T. Weil, Inc.* v. *Commissioner*, 2 Cir., 150 F. 2d 950, on which the petitioner relies for the proposition is not in conflict with the general rule but recognizes expressly that, "The burden was upon the taxpayer to establish that the assessment of gain could not be made upon the basis of current exchange."

Rule 32 of the Rules of Practice before the Tax Court, 26 U. S. C. A. § 1111, provides: "The burden of proof shall be upon the petitioner, except as otherwise provided by [fol. 300] statute, and except that in respect of any new matter pleaded in his answer, it shall be upon the respondent." The issue of convertibility is not the subject of other legislation shifting the normal burden and here the issue was not new matter pleaded in the respondent's answer. Accordingly, the exceptions are inapplicable and the burden of proof was properly placed on the petitioner.

The evidence amply supports the Tax Court's conclusion that the petitioner failed to prove free convertibility. Only small portions of the dividends were converted into dollars, and the manner of conversion was not even shown. The entire remainder of the dividends was treated as deferred income. Such a showing, far from being adequate proof of free convertibility, tended to suggest the lack of it.

The final point raised by the petitioner is concerned with a determination with respect to abnormal income under Section 721 of the Code. But Section 732(c), which provides that any determinations made solely by reason of Section 721 of the Code are final and "shall not be reviewed or redetermined by any court * * *" deprives us of jurisdiction to review this determination. *George Kemp Real Estate Co.* v. *Commissioner*, 2 Cir., 182 F. 847, cert. denied 340 U. S. 852; *James F. Waters, Inc.* v. *Commissioner*, 9 Cir., 160 F. 2d 596, cert. denied 332 U. S. 767.

Decision affirmed except as to the final point and as to that the petition is dismissed for lack of jurisdiction.

[fol. 301] IN UNITED STATES COURT OF APPEALS, SECOND CIRCUIT

(T. C. 22074)

CORN PRODUCTS REFINING CO., Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Appeal from The Tax Court of the United States

JUDGMENT—Filed August 25, 1954

This cause came on to be heard on the transcript of record from The Tax Court of the United States, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said The Tax Court of the United States be and it hereby is affirmed except as to the point concerned with a determination with respect to abnormal income under Section 721 of the Internal Revenue Code and as to that the petition be and it hereby is dismissed for lack of jurisdiction.

It is further ordered that a Mandate issue to the said The Tax Court of the United States in accordance with this decree.

(S.) A. Daniel Fusaro, Clerk.

[fol. 302] [File endorsement omitted.]

[fol. 303] IN UNITED STATES COURT OF APPEALS, SECOND CIRCUIT

(T. C. 20399)

CORN PRODUCTS REFINING CO., Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Appeal from The Tax Court of the United States

JUDGMENT—Filed August 25, 1954

This cause came on to be heard on the transcript of record from The Tax Court of the United States, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said The Tax Court of the United States be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said The Tax Court of the United States in accordance with this decree.

(S.) A. Daniel Fusaro, Clerk.

[fol. 304] [File endorsement omitted.]

[fol. 305] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1953

Nos. 158 and 159

Argued May 13, 1954. Decided August 25, 1954

Docket Nos. 22809 and 22810

COHN PRODUCTS REFINING COMPANY, Petitioner,

against

COMMISSIONER OF INTERNAL REVENUE, Respondent.

Before Chase, Chief Judge, Hincks and Harlan, Circuit Judges

PETITION FOR REHEARING—Filed September 9, 1954

To the Honorable Judges of the United States Court of Appeals for the Second Circuit:

This is a consolidated appeal from the decision of The Tax Court which redetermined a deficiency in income taxes of petitioner for 1940 and deficiencies in its excess profits taxes and declared value excess profits taxes for 1942.

The Petitioner-on-Review respectfully petitions for a [fol. 306] rehearing and reconsideration of the decision of August 25, 1954, by this Court in the above entitled cases.

The grounds for this petition are:

Point I

On the issue of whether the petitioner's gains and losses on commodity futures transactions are capital or ordinary.

A. This Court failed to consider or distinguish *Estate of Dorothy Makransky* v. *Commissioner* (3rd Cir.—1946), 154 F. (2d) 59, a case directly in point.

In the *Makransky* case, the taxpayer who was engaged in the manufacture of men's suits incurred certain losses on the sale of contracts for the future delivery of wool tops. These were held to be capital losses despite the fact that the

taxpayer's purpose in acquiring the futures contracts was to take delivery of wool tops for manufacture into piece goods which would be manufactured into men's suits.

The basis of the decision is that since a *true* hedge did not exist, the commodity futures transactions must be treated by the taxpayer as capital.

The *Makransky* case is on all fours with the instant case.

This Court referred to the *Makransky* case (Opinion, p. 1791), but in no way discussed or distinguished it. It is respectfully submitted that the *Makransky* case cannot be distinguished or explained away satisfactorily. In the *Makransky* case, where it was to the Commissioner's advantage to contend that dealings in commodity futures gave [fol. 307] rise to capital losses, he did so and successfully. In the instant case, where it was to the Commissioner's advantage to contend that similar dealings in commodity futures did not give rise to capital losses, he did so, and if this Court refuses to reconsider its decison he will have done so successfully. It is respectfully submitted that an unnecessarily inconsistent and unfair situation is the result, and that if this Court had been clearly aware of the facts in the *Makransky* case and had considered it, it would not sanction such a result.

B. This Court failed to consider or distinguish *Commissioner* v. *Farmers and Ginners Cotton Oil Company* (5th Cir.—1941), 120 F. (2d) 772.

In the *Farmers and Ginners Cotton Oil Company* case, the Court, in holding that a *true* hedge did not exist and as a consequence that losses on the sales of commodity futures contracts constituted capital losses, said (p. 774):

> "Therefore, we need only examine the contention of the taxpayer which was upheld by the Board that the losses in controversy resulted from *true* hedges.
>
> "A hedge is a form of price insurance; it is resorted to by business men to avoid the risk of changes in the market price of commodities. The basic principle of hedging is the maintenance of an even or balanced market position. To exercise a choice of risk, to sell one commodity and buy another is not a hedge; it is merely continuing the risk in a different form." (Emphasis supplied.)

The Tax Court, in the *Makransky* case (reported at 5 T. C. 397, later affirmed at 154 F. (2d) 59), referred to the *Farmers and Ginners Cotton Oil Company* decision. The Court denied ordinary loss treatment to the taxpayer for failure to prove a *true* hedge. The Tax Court stated at page 413:

> "Certainly in the latter case [*Farmers and Ginners* [fol. 308] *Cotton Oil Company*] the transactions of the taxpayer more nearly resembled a *true* hedge than those of the instant case [*Makransky*]; yet the Court held against the taxpayer." (Matter in brackets and emphasis supplied.)

The Court in the instant case has itself stated that the petitioner did not have a *true* hedge (because of the "unfixed character" of petitioner's future sales commitments and because of the irregular nature of contract order cancellations); that as a result of its commodity futures transactions it was protected against commodity price rises but not against declines. What "kind or degree" of hedge is that, petitioner respectfully asks?

The contention made by the Commissioner and sustained by the 3rd and 5th Circuit Courts of Appeal in the *Makransky* and *Farmers and Ginners Cotton Oil Company* cases, *supra*, is the heart of the petitioner's position in the instant case. If taxpayers are forced by the Commissioner (supported by the Courts) to take capital losses unless they can prove a *true* hedge, it follows legally, logically, consistently, and most of all, as a matter of simple honesty and fairness, that they should be permitted to treat their commodity futures transactions that do not amount to a *true* hedge as capital transactions.

This Court, although it referred to the *Farmers and Ginners Cotton Oil Company* case (Opinion, p. 1791), did not distinguish or explain away the holding. It is respectfully submitted that if this Court had thoroughly considered that case, its rationale and implications, it would have accorded capital treatment to the results of commodity futures transactions where a *true* hedge does not exist.

[fol. 309] C. This Court failed to consider or distinguish *Trenton Cotton Oil* v. *Commissioner* (6th Cir.—1945), 147 F. (2d) 33.

In that case the question was whether the taxpayer's contracts for the purchase of refined oil futures were made to protect it against loss on the purchases of cotton seed or on the sale of crude oil for future delivery. The taxpayer had contended that the refined oil futures were purchased to offset losses sustained through the sale of the season's production of crude cotton seed oil at unsatisfactory prices. Both The Tax Court and the Court of Appeals refused to allow the taxpayer ordinary loss treatment.

The Court of Appeals affirmed The Tax Court finding that the taxpayer's purchases were not for protection on the ground that there was substantial evidence in support of The Tax Court's decision. The Tax Court had said in its Memorandum Opinion:

> "These quotations, petitioner insists 'seem to say that if the *Farmers and Ginners Cotton Oil Company* had actual commodity on hand and actual commitments to be protected against, that would amount to a *true* hedge'. We do not agree." (Emphasis supplied.)

Thus The Tax Court, affirmed by the Circuit Court, insisted that the test was whether there was a *true* hedge. Lacking such proof, the transaction was treated as a capital transaction.

D. Summary

The *Makransky, Farmers and Ginners Cotton Oil Company* and *Trenton Cotton Oil* cases contain four factual elements referred to by this Court in its holding:

(1) All cases involve commodity futures transactions. [fol. 310] (2) In all cases the transactions were an integral part of the business of the taxpayer.

(3) In all cases the transactions were made to protect the ordinary profits of the taxpayer.

(4) In all cases the decision of the Courts turned on whether or not there was a *true* hedge.

The conclusion in this case should not be inconsistent.

Point II

On the foreign exchange issue this Court has neither considered nor distinguished the *Whitney* case decided by the Third Circuit as to burden of proof.

This Court has held that petitioner did not have income from Brazilian and Italian dividends during 1939 on the ground that it failed to prove free convertibility.

Petitioner recognizes that under Rule 32 of the Rules of Practice before The Tax Court that it had the initial burden of proof on this issue. Petitioner's position is that once it had shown the receipt of the funds in a foreign currency and the fact that it was able *to convert* a portion of those funds at a price (R. 749 and 776), *and had actually used* the remainder for corporate purposes (R. 750, R. 759, and R. 762), it was incumbent upon respondent to produce competent evidence as to why income had not been received. The record shows that the respondent produced no evidence on this point.

Petitioner urges that the decision of the Third Circuit in *Richard Whitney* v. *Commissioner* (3rd Cir.—1934), 73 F. (2d) 589, be followed or distinguished.

> "The burden of proof was on the Petitioner before [fol. 314] the Board and if he met it the burden shifted and the Government was required to come forward with evidence to refute the evidence of the Petitioner. It did not do so and the Board cannot draw inferences and conclusions from facts or suppositions outside the record."

This Court misinterprets petitioner's position with respect to this issue. The real problem is not whether the petitioner had income, but how much income did petitioner have. This Court's decision in *Eder* v. *Commissioner* (2nd Cir.—1943), 138 F. (2d) 27, is exactly in point when it held:

> "Absent any showing that there are no such bases, [bases of value in U. S. dollars of various uses which could have been made of blocked pesos] it might perhaps be said that the taxpayers must lose this appeal because they did not discharge their burden of proof.

In the circumstances, we consider that such a ruling would be too severe. We, therefore, remand the case to The Tax Court for further consideration of the appropriate measure of valuation * * *." Matter in brackets supplied.)

Petitioner submits that the undisputed evidence shows that the reason it did not convert more of the foreign exchange into dollars was purely on considerations of price as against the value of other uses to which the funds were put. On cross-examination the witness, Holly L. Callender, Treasurer of the petitioner, testified (R., p. 260):

"Question: Would that also have been true of Brazilian dividends?

Answer: I think if we could have found a market here at perhaps a better rate, we would have negotiated the sale here in this market rather than in Brazil."

The question then was of petitioner's unwillingness to [fol. 312] sacrifice its foreign exchange for dollars at an unfavorable rate when it had other uses of value to it (R. 750, R. 759, R. 762, R. 777, and R. 778). In each instance, the funds from dividends were loaned for business purposes to a subsidiary of petitioner other than the subsidiary which declared the dividend.

Petitioner, therefore, submits that having shown that it could have converted and did convert the foreign currencies in question in dollars at a price and did actually use the unconverted funds, it had sustained its burden of proof and that it was then incumbent upon respondent to go forward.

Point III

On the issue of the jurisdiction of a Court of Appeals to determine the correct carry-overs of unused excess profits credit this Court has not considered or distinguished contrary decisions of the Sixth, Eighth, and Ninth Circuits in parallel situations.

This Court has held that it does not have jurisdiction to consider the effect of petitioner's abnormal income, realized in 1941, on its excess profits credit carry-over

from the same year. This Court, it is respectfully urged, has misread Section 732(c). The issue before this Court does not concern Section 721 as such. The existence of abnormal income under Section 721 has been conceded by the respondent in the amount of $436,945.36 (R., p. 210, Folio 630). The only issue is the correct computation of petitioner's excess profits credit carry-over, which is determined by Section 710(c). The determination of the issue here is, therefore, not "necessary *solely by reason* of * * * Section 721." (Emphasis supplied.)

Under similar circumstances, other Courts of Appeal have held that they do have jurisdiction to review the de- [fol. 313] cisions of The Tax Court. In *Stimson Mill Co.* v. *Commissioner* (9th Cir.—1947), 163 F. (2d) 269, and in *Dowd-Feder, Inc.* v. *Commissioner* (6th Cir.—1949), 173 F. (2d) 673, the petitioners having been allowed relief under Section 722 claimed further relief under Section 713(e)(1) (the so-called 75% rule), alleging that in computing the excess profit credit the reconstructed base period income under Section 722 should be used in raising the lowest base period year to 75% of the average of the other base period years. The respective Courts of Appeal, over objection from the Government as to jurisdiction, ruled that they did have power to review a collateral consequence of the application of Section 722. They held that both Sections 722 and 713(e)(1) were involved and that, therefore, the question did not rise solely by reason of Section 722. So here, the petitioner's claim arises under Section 710(c) as well as under Section 721. See also *Packer Publishing Company* v. *Commissioner* (8th Cir.—1954), 211 F. (2d) 612, where the Court asserted its own jurisdiction to review The Tax Court, as well as the jurisdiction of The Tax Court itself to pass on a collateral consequence of Section 722 relief. There the allowance of Section 722 relief increased the profit (after tax) of the taxable year and hence an officer who was employed on a profit sharing contract became entitled to a larger bonus. The petitioner claimed a deduction for this additional bonus—presumably as a business expense under Section 23(a)—and the Appellate Court, again over Government objection to jurisdiction, ruled that it could review The Tax Court's refusal to make the claimed adjustment.

The above cases were all cited by the petitioner in its brief, but this Court has not discussed or referred to them in any way. This Court did rest its decision on *George Kemp Real Estate Company* v. *Commissioner* (2nd Cir.—1950), 182 F. (2d) 847, and *James F. Walters, Inc.* v. *Commissioner* (9th Cir.—1947), 160 F. (2d) 596. Petitioner respectfully urges that the present case is distin- [fol. 314] guishable from them. These cases held that the Appellate Court had no power to review decisions of The Tax Court holding that Sections 722 and 721 respectively were not applicable. *No other Section of the Code was involved.* If petitioner were appealing from an adverse decision of The Tax Court with respect to the existence or amount of its net abnormal income, these cases would apply. But that net abnormal income is here conceded. The question is how it should be applied under Section 710(c). Under these circumstances, the jurisdiction of this Court to review The Tax Court and to pass upon the correctness of *San Francisco Stevedoring Co.* (1947), 8 T. C. 222 is established.

Conclusion

Petitioner respectfully requests that in order to prevent an injustice, this petition for rehearing be granted and the opinion of the United States Court of Appeals for the Second Circuit of August 25, 1954, be recalled and, upon further consideration, amended to reverse the decisions of The Tax Court.

Respectfully submitted, Jay O. Kramer, Attorney for Petitioner % Milton M. Bernard, Samuel A. McCain, Attorney for Petitioner.

Harry J. Rudick, Of Counsel.

Dated: New York, New York, September 9, 1954.

[fol. 315] Certificate of Counsel

We, JAY O. KRAMER and SAMUEL A. MCCAIN, counsel for the above named petitioner, do hereby certify that the foregoing Petition for a Rehearing of this cause is presented in good faith and not for delay.

Jay O. Kramer, Attorney for Petitioner % Milton M. Bernard, Samuel A. McCain, Attorney for Petitioner.

Harry J. Rudick, Of Counsel.

Dated: New York, New York, September 9, 1954.

[fol. 316] IN UNITED STATES COURT OF APPEALS

CORN PRODUCTS REFINING COMPANY, Petitioner,

against

COMMISSIONER OF INTERNAL REVENUE, Respondent

Before Chase, Hincks and Harlan, Circuit Judges

Jay O. Kramer, Samuel A. McCain, Attorneys for Petitioner, Milton M. Bernard, Harry J. Rudick, of Counsel.

Filed September 27, 1954

Per CURIAM:

Petition for rehearing denied.

[fol. 317] [File endorsement omitted.]

[fol. 318] In United States Court of Appeals, Second Circuit

Corn Products Refining Company, Petitioner,

v.

Commissioner of Internal Revenue, Respondent

Corn Products Refining Company, Petitioner,

v.

Commissioner of Internal Revenue, Respondent

Order Denying Rehearing—Filed September 27, 1954

A petition for a rehearing having been filed herein by counsel for Corn Products Refining Company,

Upon consideration thereof, it is

Ordered that said petition be and hereby is denied.

(S.) A. Daniel Fusaro, Clerk.

[fol. 319] [File endorsement omitted.]

[fol. 320] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 321] Supreme Court of the United States, October Term, 1954

No. 457

[Title omitted]

Order Allowing Certiorari—Filed January 10, 1955

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted limited to questions 1 and 2 presented in the petition for certiorari which read as follows:

"1. Are transactions in commodity futures which are not 'true hedges' capital asset transactions and thus subject to the limitations of § 117 of the Internal Revenue Code of

1939, or do the resulting gains and losses from such transactions give rise to ordinary income and ordinary deductions? (1940) (1942)

"2. Are commodity futures contracts 'securities' and thus subject to the 'wash sales' provisions of § 118 of the Internal Revenue Code of 1939? (1940) (1942)"

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(3400)